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*Kayla Dvorak
11th Grade*



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Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(800) 226-7199
(512) 463-5561
FAX (512) 463-5569
<http://www.sos.state.tx.us>
subadmin@sos.state.tx.us

Secretary of State –
Roger Williams
Director - Dan Procter

Staff
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TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Request

AOR-522 The Texas Ethics Commission has been asked to consider whether a legislator who is a lawyer may be employed by a law firm that represents clients before a state agency.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 36, Penal Code; and (8) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200500961

Sarah Woelk

General Counsel

Texas Ethics Commission

Filed: March 3, 2005

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 3. CRIMINAL JUSTICE DIVISION

The Office of the Governor, Criminal Justice Division (CJD), proposes the amendment of Subchapter C §3.203 and §3.1205.

The proposed amendment to subsection (b) of §3.203 updates the language of this subsection to reflect the current federal legislation, rules and guidelines applicable to the Juvenile Justice and Delinquency Prevention Act Fund.

The proposed amendment to subsection (a) of §3.1205 clarifies that applicants for state discretionary set-aside grants are eligible for funding only under the specific program purpose areas selected by the Governor's Juvenile Justice Advisory Board in accordance with the federal legislation, rules and guidelines applicable to the Juvenile Accountability Block Grant Program.

Kevin Baisdon, Coordinator of Budget and Finance for CJD, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Baisdon has also determined that for the first five-year period that the sections are in effect the public benefit anticipated as a result of enforcing the sections will be more efficient processes and procedures and the current rules will be more easily understood. There will be no anticipated economic cost to persons or businesses for complying with the proposed rules.

Comments on the proposed amendments, may be submitted to Heather Morgan, Office of the Governor, Criminal Justice Division, at hmorgan@governor.state.tx.us; P. O. Box 12428, Austin, Texas 78711; or (512) 463-1919. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

SUBCHAPTER C. FUND-SPECIFIC GRANT POLICIES

DIVISION 2. JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT FUND

1 TAC §3.203

The amendment of this rule is proposed under the Texas Government Code, Title 7, §772.006(a)(10), which authorizes CJD to adopt rules and procedures as necessary.

The amended rule implements the Texas Government Code, Title 7, §772.006(a), which requires CJD to award and administer state and federal grant programs, and to assist the Governor in developing policies, plans, programs, and proposed legislation

for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of this rule.

§3.203. *Project Requirements.*

(a) (No change.)

(b) Grant funds can support projects to prevent juvenile delinquency including:

(1) Aftercare/Reentry. Programs to prepare targeted juvenile offenders to successfully return to their communities after serving a period of secure confinement in a training school, juvenile correctional facility, or other secure institution. Aftercare programs focus on preparing juvenile offenders for release and providing a continuum of supervision and services after release. ~~[Community Based Alternatives to Incarceration. This includes projects that serve youth who need temporary placement such as crisis intervention; shelter, and after-care; and projects that serve youth who need residential placement such as a continuum of foster care or group home alternatives that provide access to a comprehensive array of services.]~~

(2) Alternatives to Detention. Alternative services provided to a juvenile offender in the community as an alternative to confinement. ~~[Strengthening Families. This includes community-based programs and services that work with:]~~

~~[(A) parents and other family members to strengthen families, including parent self-help groups, so that juveniles may be retained in their homes;]~~

~~[(B) juveniles during their incarceration, and with their families; to ensure the safe return of such juveniles to their homes and to strengthen the families; and]~~

~~[(C) parents with limited English-speaking ability, particularly in areas where there is a large population of families with limited English-speaking ability.]~~

(3) Child Abuse and Neglect Programs. Programs that provide treatment to juvenile offenders who are victims of child abuse or neglect and to their families to reduce the likelihood that such juvenile offenders will commit subsequent violations of law. ~~[Collaboration of Local Systems. This includes programs that meet the needs of youth through the collaboration of the many local systems before which a youth may appear, including schools, courts, law enforcement agencies, child protection agencies, mental health agencies, welfare services, health care agencies, and private nonprofit agencies offering youth services.]~~

(4) Children of Incarcerated Parents. Services designed to prevent delinquency or treat delinquent juveniles who are the children of incarcerated parents. ~~[Treatment for Victims. This includes programs that provide treatment to juvenile offenders who are the victims of child abuse or neglect, and to their families, in order to reduce the~~

likelihood that such offenders will commit subsequent violations of law.]

(5) Community Assessment Centers (CACs). Centers that lead to more integrated and effective cross-system services for juveniles and their families. CACs are designed to positively affect the lives of youth and divert them from a path of serious, violent, and chronic delinquency. Using a collaborative approach, CACs serve the community in a timely, cost-efficient, and comprehensive manner. [Educational Programs and Supportive Services. This includes programs that:]

[(A) encourage juveniles to remain in elementary or secondary schools or in alternative learning situations;]

[(B) provide services to assist juveniles in making the transition to the world of work and self-sufficiency; and]

[(C) enhance coordination with the local schools that such juveniles would otherwise attend; to ensure that:]

[(i) the instruction that juveniles receive outside school is closely aligned with the instruction provided in school; and]

[(ii) information regarding any learning problems identified in such alternative learning situations are communicated to the schools.]

(6) Court Services. Programs designed to encourage courts to develop and implement a continuum of pre- and post-adjudication restraints that bridge the gap between traditional probation and confinement in a correctional setting. Services include expanded use of probation, mediation, restitution, community service, treatment, home detention, intensive supervision, electronic monitoring, translation services and similar programs, and secure, community-based treatment facilities linked to other support services. [Probation. This includes programs that expand the use of probation officers to address the following:]

[(A) permitting nonviolent juvenile offenders (including status offenders) to remain at home with their families as an alternative to incarceration or institutionalization; and]

[(B) ensuring juveniles follow the terms of their probation.]

(7) Delinquency Prevention. Programs or other initiatives designed to reduce the incidence of delinquent acts and directed to the general youth population thought to be at risk of becoming delinquent. This category includes what is commonly referred to as "primary prevention" (e.g., parent education, peer counseling). This program area excludes programs targeted at youth already adjudicated delinquent and those programs designed specifically to prevent gang-related or substance abuse activities undertaken as part of program areas described in paragraphs 10 and 28 of this subsection. [Counseling, Training, and Mentoring. This includes programs in support of academic tutoring, vocational and technical training, and drug and violence prevention counseling that are designed to link at-risk juveniles, juvenile offenders, or juveniles who have a parent who is or was incarcerated, with responsible individuals who are properly trained.]

(8) Disproportionate Minority Contact. Programs or other initiatives designed primarily to address the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system, pursuant to §223(a)(22) of the JJDP. [Learning Disabilities. This includes programs that are designed to develop and implement projects relating to juvenile delinquency and learning disabilities, including on-the-job training programs to assist community services, law enforcement, and juvenile justice personnel to more effectively recognize and provide for learning disabled and other juveniles with disabilities.]

(9) Diversion. Programs to divert juveniles from entering the juvenile justice system. [Gangs. This includes programs designed to deter involvement in illegal activities and to promote involvement in lawful activities on the part of gangs whose membership is substantially composed of youth.]

(10) Gangs. Programs or other initiatives designed primarily to address issues related to juvenile gang activity. This program area includes prevention and intervention efforts directed at reducing gang-related activities. [Drug Treatment. This includes programs designed to provide for the treatment of youths' dependence on or abuse of alcohol or other addictive or non-addictive drugs.]

(11) Gender-Specific Services. Services designed to address the needs of female offenders in the juvenile justice system. [Positive Youth Development. This includes programs that promote positive youth development by assisting delinquent and other at-risk youth in obtaining a sense of safety and structure; a sense of belonging and membership; a sense of self-worth and social contribution; a sense of independence and control over life; and, a sense of closeness in interpersonal relationships.]

(12) Graduated Sanctions. A system of sanctions that escalate in intensity with each subsequent, more serious delinquent offense. [Diversion. This includes programs that encourage the courts to develop and implement a continuum of post-adjudication restraints that bridge the gap between traditional probation and confinement in a correctional setting.]

(13) Gun Programs. Programs (excluding programs to purchase from juveniles) designed to reduce the unlawful acquisition and illegal use of guns by juveniles. [Language and Other Barriers. This includes programs (including referral to literacy programs and social service programs) to assist families with limited English-speaking ability that include delinquent juveniles to overcome language and other barriers that may prevent the complete treatment of juveniles and the preservation of their families.]

(14) Hate Crimes. Programs [This includes programs] designed to prevent and [to] reduce hate crimes committed by juveniles.

(15) Jail Removal. Programs or other initiatives designed to eliminate or prevent the placement of juveniles in adult jails and lock-ups, as defined in §223(a)(13) of the JJDP. [After-School Programs. This includes after-school programs that provide at-risk juveniles and juveniles in the juvenile justice system with a range of age-appropriate activities, including tutoring, mentoring, and other educational and enrichment activities.]

(16) Job Training. Programs to enhance the employability of juveniles or prepare them for future employment. Such programs may include job readiness training, apprenticeships, and job referrals. [Post-Placement Services to Adjudicated Juveniles. This includes community-based programs that provide follow-up and post-placement services to adjudicated juveniles, to promote successful reintegration into the community.]

(17) Juvenile Justice System Improvement. Programs or other initiatives designed to examine issues or improve practices, policies, or procedures on a system-wide basis (e.g., examining problems affecting decisions from arrest to disposition and detention to corrections). [Protect the Rights of Juveniles. This includes programs designed to protect the rights of juveniles affected by the juvenile justice system.]

(18) Mental Health Services [for Incarcerated Juveniles]. Services include, but are not limited to, the development and/or enhancement of diagnostic, treatment, and prevention instruments; psychological and psychiatric evaluations; counseling services; and/or

family support services. [This includes programs designed to provide mental health services for incarcerated juveniles suspected to be in need of such services, including assessment, development of individualized treatment plans, and discharge plans.]

(19) Mentoring. Programs designed to develop and sustain a one-to-one supportive relationship between a responsible adult age 18 or older (mentor) and an at-risk juvenile (mentee) that takes place on a regular basis.

(20) American Indian Programs. Programs designed to address juvenile justice and delinquency prevention issues for American Indians and Alaska Natives.

(21) Probation. Programs to permit juvenile offenders to remain in their communities under conditions that the juvenile court prescribes.

(22) Restitution/Community Service. Programs to hold juveniles accountable for their offenses by requiring community service or repayment to the victim.

(23) Rural Area Juvenile Programs. Prevention, intervention, and treatment services in an area located outside a metropolitan statistical area as designated by the U.S. Bureau of the Census.

(24) School Programs. Education programs and/or related services designed to prevent truancy, suspension, and expulsion. School safety programs may include support for school resource officers and law-related education.

(25) Separation of Juveniles From Adult Inmates. Programs that ensure that juveniles will not be detained or confined in any institutions where they may come into contact with adult inmates, pursuant to §223(a)(12) of the JJDP.

(26) Serious Crime. Programs or other initiatives designed to address serious and violent criminal-type behavior by youth. This program area includes intervention, treatment, and reintegration of serious and violent juvenile offenders.

(27) Sex Offender Programs. Programs to support the assessment, treatment, rehabilitation, supervision, and accountability of juvenile sex offenders.

(28) Substance Abuse. Programs or other initiatives designed to address the use and abuse of illegal and other prescription and nonprescription drugs and the use and abuse of alcohol. Programs include control, prevention, and treatment.

(29) Youth Advocacy. Projects designed to develop and implement advocacy activities focused on improving services for and protecting the rights of youth affected by the juvenile justice system.

(30) Youth Courts. Youth courts (also known as teen courts) are juvenile justice programs in which peers play an active role in the disposition of the juvenile offender. Most youth courts are used as a sentencing option for first-time offenders charged with misdemeanor or nonviolent offenses who acknowledge their guilt. The youth court serves as an alternative to the traditional juvenile court.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2005.
TRD-200500958

David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: April 17, 2005
For further information, please call: (512) 463-1919



DIVISION 12. JUVENILE ACCOUNTABILITY BLOCK GRANT PROGRAM

1 TAC §3.1205

The amendment of this rule is proposed under the Texas Government Code, Title 7, §772.006(a)(10), which authorizes CJD to adopt rules and procedures as necessary.

The amended rule implements the Texas Government Code, Title 7, §772.006(a), which requires CJD to award and administer state and federal grant programs, and to assist the Governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of this rule.

§3.1205. *Eligible Applicants.*

(a) Twenty-five percent of this fund is available for state discretionary set-aside grants to state agencies, units of local government (including crime control and prevention districts), Native American tribal governments, COGs, nonprofit corporations, and faith-based organizations. Faith-based organizations must be certified by the Internal Revenue Service as tax-exempt nonprofit entities. Grantees may not use grant funds or program income for proselytizing or sectarian worship. Discretionary projects are eligible for funding only under the specific program purpose areas selected by the Governor's Juvenile Justice Advisory Board from the program purpose areas listed in §3.1203 of this chapter [paragraphs (10), (11), (13), and (15) only of §3.1203 of this chapter].

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2005.

TRD-200500959
David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: April 17, 2005
For further information, please call: (512) 463-1919



PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 61. CRIME VICTIMS' COMPENSATION

The Office of the Attorney General (OAG) proposes amendments to Subchapter C, Application §§61.201, Subchapter E, Pecuniary Loss §§61.402, 61.404, 61.405, and 61.411, and

Subchapter F, Medical Care §§61.503, 61.506, and 61.507 relating to the rules for the administration of the Crime Victims' Compensation Program and proposes to revise Subchapter F, Medical Care, by adding new §61.508. The proposed amendments and new rule will better serve victims of crime by improving the administration of the CVC fund.

According to Texas Constitution, art. I, §31, the compensation to victims of crime (CVC) fund may be expended as provided by law only for delivering or funding victim-related compensation, services, or assistance.

Texas Code of Criminal Procedure, Art. 56.33 provides that the OAG shall adopt rules governing the administration of the CVC fund, including rules relating to the method of filing claims, proof of entitlement to compensation, and review of health care services.

The proposed amendments and new rule accurately implement, interpret, and prescribe the law and minimum standards of practices, procedures, and policies of the OAG relating to the administration of the CVC fund as required by the Administrative Procedures Act, Texas Government Code, Ch. 2001.

Subchapter C (Application, §61.201). The proposed amendment to Section 61.201 adds language to subsection (c) to clarify who is authorized to sign an application for minors.

Subchapter E (Pecuniary Loss, §§61.402, 61.404, 61.405, and 61.411). The proposed amendment to §61.402(a) specifies who is eligible to receive loss of earnings and how to submit forms; subsections (c) and (d) clarify that the OAG will be responsible for scheduling and paying for independent medical evaluations; and subsection (m) limits the hours that will be paid for individual appointments to prevent overpayment of lost earnings. Section 61.404(a) provides for starting points other than a person's residence for travel reimbursements; subsection (b) has been changed to accurately reflect the covered articles; subsection (d) clarifies the employment verification process; subsection (e) makes a technical corrections to a citation; subsections (f) and (g) change the term "compensation" to "reimbursement" for clarity and make technical corrections to a citation; subsection (h) limits the hours that will be paid for individual appointments to prevent overpayment of lost earnings; and subsection (i) limits travel expenses when victims or claimants are receiving free counseling. Section 61.405(b) provides the procedures for child care reimbursements and places a cap on the benefit and (e) makes a technical change to the dollar amount listed for replacement costs. Section 61.411(b) provides the procedures for submitting information when compensation benefits are ongoing.

Subchapter F (Medical Care, §§61.503, 61.506, and 61.507). The proposed amendment to §61.503(d) includes reimbursement provisions for psychiatric medication for patients receiving counseling and subsection (e) adds new language to limit payment of health care services when someone else has been ordered to pay as a means of ensuring collateral sources are used for payment. Section 61.506 adds a provision to establish and define a standard of fair and reasonable for dental care services. Section 61.507(c) provides for the method of payment for out of state health care services, other than acute trauma care; subsection (d) defines fair and reasonable payments for inpatient trauma care; and subsection (e) adds provisions to process bills submitted by service providers for amounts less than \$5.00.

The OAG is also proposing new rule §61.508 to outline the review of health care services and standards, to define medically

necessary services, and to add provisions for processing bills submitted more than five years after the date of service.

Mr. Herman Millholland, Chief of the Crime Victim Services Division of the OAG, has determined that for the first five year period in which the proposed rule and amendments are in effect, no fiscal implication to units of local government is anticipated.

Mr. Millholland has also determined that for the first five-year period in which the proposed rule and amendments are in effect there will not be an adverse effect on small businesses. There is no anticipated economic costs to persons in connection with these rules.

Mr. Millholland has determined that for the first five-year period in which the proposed rules are in effect, the anticipated public benefit is the better administration of the CVC fund to compensate innocent victims of violent crime and greater public cooperation in the apprehension and prosecution of criminals.

Comments on the proposed rule and amendments may be submitted, in writing, no later than 30 days from the date of this publication to Rita Baranowski, Assistant Attorney General, Office of the Attorney General, P.O. Box 12198, Austin, Texas 78711-2198 or by telephone (512) 936-1240 or by e-mail to rita.baranowski@oag.state.tx.us. All requests for a public hearing on the proposed rule and amendments, submitted under the Administrative Procedure Act, must be received by the OAG not more than 15 days after the notice of proposed changes in the sections that have been published in the *Texas Register*.

SUBCHAPTER C. APPLICATION

1 TAC §61.201

The amendments are proposed under the Texas Code of Criminal Procedure, Art. 56.33, which authorizes the OAG to amend rules pertaining to its administration.

The amendments effect Texas Code of Criminal Procedure, Chapter 56.

§61.201. *Application for Compensation.*

(a) - (b) (No change.)

(c) Under Tex. Code Crim. Proc. Art. 56.32(a)(2)(E), to be an authorized individual entitled to file a claim and act on behalf of a child (a minor under the age of 18), an individual must:

(1) have legal guardianship; or

(2) have the legal authority to act on behalf of the child (i.e., an individual authorized to represent the Department of Family and Protective Services); or

(3) be the parent, spouse, or the child if the child has been emancipated.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2005.

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Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

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For further information, please call: (512) 463-2110

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SUBCHAPTER E. PECUNIARY LOSS

1 TAC §§61.402, 61.404, 61.405, 61.411

The amendments are proposed under the Texas Code of Criminal Procedure, Art. 56.33, which authorizes the OAG to amend rules pertaining to its administration.

The amendments effect Texas Code of Criminal Procedure, Chapter 56.

§61.402. Loss of Earnings.

(a) Pursuant to Tex. Code Crim. Proc. Art. 56.32(a)(9)(B) and 56.32(a)(9)(I), the OAG shall determine an award for actual loss of past earnings and the anticipated loss of future earnings. Loss of earnings may be paid to victims who suffer a disability period as outlined in (b) of this rule, or to victims or claimants attending individual appointments, executions, or funerals as outlined in (e), (i) and (j) of this rule. The victim or claimant must submit information to the OAG in the manner prescribed in Rule 61.404 of this subsection.

(b) (No change.)

(c) If a victim lost past earnings as a result of mental trauma directly caused by the criminally injurious conduct, the mental health professional that regularly treats the victim may submit a written statement to the OAG verifying loss of past earnings for the victim for a maximum period of six months. In order to continue receiving benefits after six months, a victim must submit to an independent medical evaluation and a disability determination by an M.D. or a D.O. with a psychiatric specialty. The evaluation will be scheduled and paid for [provided] by the OAG.

(d) If a victim was unemployed at the time of the criminally injurious conduct and claims a loss of anticipated earnings, the victim or claimant must provide the OAG with a sufficient showing that the victim would have had earnings had the victim not suffered injury or death as a direct result of the criminally injurious conduct. "Sufficient showing" includes an affidavit from the employer, including the employer's identification number, affirming that the victim was offered employment, but was unable to begin employment as a direct result of a disability caused by the crime, or any other information deemed appropriate by the OAG. In order to continue receiving benefits after six months, a victim must submit to an evaluation and a disability determination from an M.D. or a D.O. with a similar practice specialty. The evaluation will be scheduled and paid for [provided] by the OAG.

(e) - (l) (No change.)

(m) To ensure reimbursements for lost earnings are paid at a reasonable amount, the OAG may limit reimbursement for earnings lost due to individual medical, investigative, or court appointments to four hours, unless evidence presented by the victim or claimant or an investigation by the OAG indicates that the appointment exceeded four hours.

§61.404. Travel Expenses.

(a) Pursuant to Tex. Code [øf] Crim. Proc. Art. 56.32(a)(9)(B), Art. 56.32(a)(9)(D), and Art. 56.32(a)(9)(I), the OAG may reimburse a victim or claimant for reasonable and necessary travel expenses resulting from the crime. Reasonable and necessary travel expenses include transportation provided by a commercial transportation company, or for mileage for the use of the victim's or claimant's personally owned motor vehicle, including reimbursement to a claimant transporting a victim who is physically or legally unable to operate a motor vehicle. The OAG may [will] reimburse [only] transportation expenses only from the victim's residence, unless the applicant demonstrates that extenuating circumstances exist for

another starting destination. The [and the] travel distance must exceed 20 miles one-way.

(b) Meals and lodging expenses are considered reasonable and necessary travel expenses under Tex. Code [øf] Crim. Proc. Art. 56.32(a)(9)(B)(i), (ii), and (iii), Art. 56.32(a)(9)(D), and Art. 56.32(a)(9)(I). The OAG may reimburse a victim or claimant for meals and lodging when the travel distance, one-way from the victim's residence, exceeds 60 miles. Only lodging provided by a commercial lodging establishment shall be reimbursed. The term "commercial lodging establishment" means a hotel, motel, inn, apartment, or similar entity that offers lodging to the public in exchange for compensation.

(c) (No change.)

(d) A victim or claimant seeking reimbursement shall submit a verified statement on a form prescribed by the OAG setting forth the transportation, meals, lodging and lost earnings [work hours] necessitated by travel under this section. The form shall reflect the number of hours or days of travel and attendance that made the victim or claimant absent from work, if any, and the mileage using the shortest route between the victim's residence [home] and the travel destination if a personal vehicle is used. The victim or claimant shall submit all receipts of transportation and lodging with the claim form. An employment verification form is required to verify time lost from work. The forms [form] shall contain all [one] of the signatures of the appropriate officials [official] in the following manner:

(1) - (4) (No change.)

(5) for loss of earnings, the signature of the victim, the victim's or claimant's employer, or any other person deemed appropriate by the OAG to verify how much time was missed [lost] from work and the rate of pay;

(6) for attendance at the funeral or memorial service of a victim, the signature of the person officiating the service or a representative of the funeral home, or any other person deemed appropriate by the OAG; or

(7) (No change.)

(e) A non-resident victim or claimant who is a witness may not be reimbursed for travel expenses, pursuant to Tex. Code Crim. Proc. Art. 56.32(a)(9)(B)(iii), for attendance at or participation in the prosecution, judicial, post conviction or post adjudication proceedings to the extent the non-resident victim or claimant witness is eligible for reimbursement pursuant to Tex. Code [øf] Crim. Proc. Articles 56.32 and 35.27.

(f) Reimbursement [Compensation] for reasonable and necessary travel expenses incurred by a claimant on or after June 21, 2003, is available for the purpose of witnessing an execution, as provided by Tex. Code [øf] Crim. Proc. Art. 56.32(a)(9)(I).

(g) Reimbursement [Compensation] for reasonable and necessary travel expenses incurred by an immediate family member or household member of a deceased victim to attend the funeral or memorial service of the victim, as provided by Tex. Code [øf] Crim. Proc. Art. 56.32(a)(9)(D), is available for one funeral or memorial service per immediate family member or household member, for criminally injurious conduct occurring on or after September 1, 2003.

(h) To ensure reimbursements for lost earnings are paid at a reasonable amount, the OAG may limit reimbursement for earnings lost due to individual medical, investigative, or court appointments to four hours, unless evidence presented by the victim or claimant or an investigation by the OAG indicates that the appointment exceeded four hours.

(i) Travel expenses for counseling appointments will not be paid once counseling limits have been reached. The OAG may limit reimbursements for travel expenses to 30 sessions when counseling is provided by another agency.

§61.405. Other Limits on Compensation.

(a) (No change.)

(b) Under Tex. Code Crim. Proc. Art. 56.32(a)(9)(c), the cost of care for a dependent of a victim or a minor child of a victim may be awarded if the criminally injurious conduct occurred on or after September 1, 1997, and the care is a new expense resulting from the crime. This benefit is subject to the following provisions: [limited to care provided by a licensed care provider at a rate of \$100 per week per dependent or minor child.]

(1) Care must be provided by a certified, registered, or licensed care provider.

(2) The OAG will provide reimbursement for the care at a maximum rate of \$100 per week per dependent or minor child or the actual cost of child care, whichever is less. A minor child for purposes of this benefit may be limited to children 14 years of age or younger. The age requirement may be removed by the OAG upon review of extenuating circumstances.

(3) The OAG may limit child care benefits for the dependent(s) of a surviving victim to a maximum of 90 days. Under extenuating circumstances, child care benefits may be extended upon review by the OAG.

(4) Child care benefits for the dependent(s) of a deceased victim may be paid on an ongoing basis up to a maximum of \$100 per week based on the pecuniary loss. This benefit is subject to the award cap determined by the date of the criminally injurious conduct, up to the maximum amount of the claim or until the dependent(s) no longer qualifies for this benefit by age, marital status, or emancipation.

(c) - (d) (No change.)

(e) Under Tex. Code Crim. Proc. Art. 56.32(a)(9)(G), if the criminally injurious conduct occurred on or after September 1, 1995, the OAG may pay for the reasonable replacement costs, not to exceed \$750[.00] in the aggregate, for property seized as evidence, rendered unusable as a result of the criminal investigation, or that is not returned to the victim or claimant by law enforcement within a reasonable period of time.

§61.411. Evidence of a Pecuniary Loss.

(a) (No change.)

(b) To receive an ongoing compensation benefit [benefits], the victim or claimant must submit bills, records or evidence of the continuing pecuniary loss to the OAG within six months after the date the services were provided or the cost was incurred. The OAG may close the claim for failure to comply with the six-month limitation period.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

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For further information, please call: (512) 463-2110

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SUBCHAPTER F. MEDICAL CARE

1 TAC §§61.503, 61.506, 61.507

The amendments are proposed under the Texas Code of Criminal Procedure, Art. 56.33, which authorizes the OAG to amend rules pertaining to its administration.

The amendments effect Texas Code of Criminal Procedure, Chapter 56.

§61.503. Mental Health Counseling Expenses.

(a) - (c) (No change.)

(d) Reimbursement for related psychiatric medication for victims or claimants may be limited to one year from the date of crime, or when counseling limits are reached. The victim or claimant must be in counseling during the time frame that psychiatric medications are being reimbursed . Medical management under this provision must be performed by a psychiatrist.

(e) When counseling or other mental health services have been ordered by the court, the OAG may deny payment if another party has been ordered to make payments or if a victim or if a victim receiving counseling has been ordered to undergo counseling as an offender.

§61.506. Reimbursement of Expenses for Dental Services.

Pre-treatment plans for dental services are required and written authorization for dental services is recommended. Examinations and x-rays do not require authorization and may be paid upon approval of the OAG. Pursuant to Tex. Code Crim. Proc. Art. 56.34(d), after investigation, the OAG has determined that there is a reasonable health care justification for deviation from the Texas Workers' Compensation Commission Medical Fee Guidelines, and that reimbursement [Reimbursement] for dental services shall be [is] subject to fair and reasonable guidelines. For dental services normally associated with criminally injurious conduct, the OAG has determined that fair and reasonable reimbursements will be paid at the amount billed or the mean amount published in the current American Dental Association Survey of Dental Fees, whichever is less.

§61.507. Payments to Service Providers.

(a) Any of the following acts by a service provider constitutes a violation for which the service provider is subject to subsection (b) of this section:

(1) submitting charges for services that were not rendered [furnished];

(2) - (6) (No change.)

(b) (No change.)

(c) The OAG shall award compensation for out of state health care services, except for acute trauma care as provided in subsection (d) of this section, according to the Texas Workers' Compensation Commission medical fee guidelines.

(d) Under the Texas Workers' Compensation Commission medical fee guidelines, reimbursements for acute trauma care shall be paid at a fair and reasonable amount. The OAG has determined that a fair and reasonable amount under this provision is the maximum allowable reimbursement under the Medicare program or the amount billed, whichever is less.

(e) To maximize efficiency, bills submitted by service providers for \$5.00 or less will not be processed. Service providers are encouraged to combine bills of \$5.00 or less to ensure payment can be made.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Assistant Attorney General

Office of the Attorney General

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1 TAC §61.508

The new rule is proposed under the Texas Code of Criminal Procedure, Art. 56.33, which authorizes the OAG to adopt rules pertaining to its administration.

The new rule effects Texas Code of Criminal Procedure, Chapter 56.

§61.508. Review of Health Care Services.

Pursuant to Tex. Code Crim. Proc. Art. 56.385, the OAG may review all bills and requests for reimbursements for health care services before making a compensation payment to determine if the services were medically necessary subject to the following provisions:

(1) Medically necessary services are those that cure or relieve the effects naturally resulting from the injury; that promote recovery; and that enhance the victim's or claimant's ability to return to pre-crime health status.

(2) Health care services provided as maintenance for wellness and prevention of disease or to maintain or prevent deterioration of a chronic condition will be considered maintenance health care services that are not eligible for reimbursement. Clinical improvement must be documented and care must be corrective, not supportive as reflected by the treatment plan.

(3) The OAG must be able to properly verify information as submitted to determine if the health care services were medically necessary. Unless the OAG has made a determination that extenuating circumstances exist, the OAG will not process bills and requests for reimbursements for health care services that are received five years after the date of service. For child victim treatment reimbursement up to the patient's 21st birthday, medical records will need to be secured and submitted by the requestor for consideration of payment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

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TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 45. MARKETING PRACTICES SUBCHAPTER C. STANDARDS OF IDENTITY FOR MALT BEVERAGES

16 TAC §45.78

The Texas Alcoholic Beverage Commission proposes an amendment to §45.78, governing mandatory information on malt beverage labels. The current rule requires such labels to reflect both the bottler and the place where bottled. The proposed amendment will allow the bottler to show its principal place of business in lieu of the place where bottled. The proposed amendment will also allow the commission to reject labels that are deceptive or misleading to consumers.

Lou Bright, General Counsel, has determined that for the first five year period this rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing this amendment, nor will there be an adverse fiscal impact for small businesses.

Mr. Bright has determined that the public will benefit from the proposed amendment because it will conform Texas regulation to national standards, thereby freeing malt beverage manufacturers from the burden of making labels specifically for Texas commerce. There is accordingly no anticipated cost to persons required to comply with this rule.

Comments may be submitted to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

This amendment is proposed under the authority of §5.31 of the Texas Alcoholic Beverage Code, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

Cross Reference: Sections 101.41 and 101.67 of the Alcoholic Beverage Code are affected by this amendment.

§45.78. Name and Address.

(a) Domestic malt beverages. On labels of containers of domestic malt beverages there shall be stated, the name of the bottler and the place where bottled. The bottler's principal place of business may be shown in lieu of the actual place where bottled if the address shown is a location where bottling actually takes place. If such malt beverages are bottled for a person other than the actual bottler there may be stated in addition to the name and address of the bottler (but not in lieu thereof), the name and address of such person immediately preceded by the words "bottled for," "distributed by," or some other similar appropriate phrase.

(b) Imported malt beverages. On labels of containers of imported malt beverages there shall be stated the words "imported by," or a similar appropriate phrase, and immediately thereafter the name of the licensee or permittee who is the importer, together with the principal place of business of such licensee or permittee. In addition there may, but need not, be stated the name and principal place of business of the foreign manufacturer, bottler, or shipper.

(c) Post office address. The "place" stated shall be the post office address, except that the street address may be omitted. No additional places or addresses shall be stated for the same person, unless:

(1) such person is actively engaged in the conduct of an additional bona fide and actual malt beverage business at such additional place or address; and

(2) the label also contains, in direct conjunction therewith, appropriate descriptive material indicating the function occurring at such additional place or address in connection with the particular malt beverage.

(d) Notwithstanding the above, the commission may refuse an application for label approval if they believe there is any information, included or excluded, on the label that causes consumers to be confused or misled.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 7, 2005.

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Alan Steen

Administrator

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3204



SUBCHAPTER D. ADVERTISING AND PROMOTION--ALL BEVERAGES

16 TAC §45.110

The Texas Alcoholic Beverage Commission proposes an amendment to §45.110, relating to inducements. The proposed amendment would allow, but not require, suppliers of alcoholic beverages to calculate the price of their product by reference to the volume of sales to multiple locations under a common ownership without violating statutory proscriptions against the provision of inducements or excessive discounts to retailers.

Lou Bright, General Counsel, has determined that for the first five year period this rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing the rule. The rule does not compel behavior that causes an adverse fiscal impact on small businesses. However, the rule authorizes adjusting the price of alcoholic beverages in relation to the volume of sales. Some suppliers may, therefore, choose to offer large retailers more favorable terms of sale than are offered to small retailers. The degree to which such practices will impact small businesses cannot be calculated because it is a function of the pricing schedules and practices adopted by individual suppliers.

Mr. Bright has determined that the public will potentially benefit by this action because the proposed amendment will give alcoholic beverage suppliers greater latitude in setting prices for their products.

Comments may be directed to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

This rule is proposed under §5.31 of the Texas Alcoholic Beverage Code, which gives the commission the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

Cross Reference: Sections 102.07 and 108.06 of the Alcoholic Beverage Code are affected by this amendment.

§45.110. Inducements.

(a) General. This rule is enacted pursuant to §§ 102.04, 102.07, 102.12 and 108.06.

(b) This rule applies to members of the manufacturing and wholesale tiers for all alcoholic beverages.

(c) Inducements. Notwithstanding any other provision of these rules, practices and patterns of conduct that place retailer independence at risk constitute an illegal inducement as that term is used in the Alcoholic Beverage Code. Examples of unlawful inducements are:

(1) purchasing or renting shelf, floor or warehouse space from or for a retailer;

(2) requiring a retailer to purchase one product in order to be allowed to purchase another product at the same time;

(3) providing or purchasing, in whole or in part, any type of advertising benefiting any specific retailer;

(4) furnishing food and beverages, entertainment or recreation to retailers or their agents or employees except under the following conditions:

(A) the value of food, beverages, entertainment and recreation shall not exceed \$500.00 per person on any one occasion; and

(B) food, beverages, entertainment and recreation provided may only be consumed or enjoyed in the immediate presence of both the providing upper tier member and the receiving retail tier member; and

(C) in the course of providing food, beverages, entertainment or recreation under this rule, upper tier members may only furnish ground transportation.

(D) food, beverages, recreation and entertainment may also be provided during attendance at a convention, conference, or similar event so long as the primary purpose for the attendance of the retailer at such event is not to receive benefits under this rule.

(E) each upper tier member shall keep complete and accurate records of all expenses incurred for retailer entertainment for two years.

(5) furnishing of service trailers with equipment to a retailer; or

(6) furnishing transportation or other things of value to organized groups of retailers. Members of the manufacturing and distribution tiers may advertise in convention programs, sponsor functions or meetings and other participate in meetings and conventions of trade associations of general membership.

(d) Criteria for determining retailer independence. The following criteria shall be used as a guideline in determining whether a practice or pattern of conduct places retailer independence at risk. The following criteria are not exclusive, nor does a practice need to meet all criteria in order to constitute an inducement.

(1) The practice restricts or hampers the free economic choice of a retailer to decide which products to purchase or the quantity in which to purchase them for sale to consumers.

(2) The retailer is obligated to participate in a program offered by a member of the manufacturing or wholesale tier in order to obtain that member's product.

(3) The retailer has a continuing obligation to purchase or otherwise promote the industry member's product.

(4) The retailer has a commitment not to terminate its relationship with a member of the manufacturing or wholesale tier with respect to purchase of that member's products.

(5) The practice involves a member of the manufacturing or wholesale tier in the day-to-day operations of the retailer. For example, the member controls the retailer's decisions on which brand of product to purchase, the pricing of products, or the manner in which the products will be displayed on the retailer's premises.

(6) The practice is discriminatory in that it is not offered to all retailers in the local market on the same terms without business reasons present to justify the difference in treatment.

(e) Calculating the price of alcoholic beverages by reference to the volume of sales to multiple locations under a common ownership does not constitute an unlawful inducement or an excessive discount.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Alan Steen

Administrator

Texas Alcoholic Beverage Commission

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING MASTER TEACHER GRANT PROGRAMS

19 TAC §102.1015

The Texas Education Agency (TEA) proposes new §102.1015, concerning the master science teacher grant program. The proposed new §102.1015 would establish implementation and eligibility requirements for the Master Science Teacher Grant Program authorized by the TEC, §21.413.

House Bill 411, 78th Texas Legislature, 2003, created the new Master Science Teacher Grant Program. Through new 19 TAC §102.1015, the commissioner exercises rulemaking authority to propose rules for implementation of the grant program to allow for the distribution of grants to school districts with identified high-need campuses for payment of stipends to certified master science teachers designated by the districts. The proposed new 19 TAC §102.1015 defines terms and sets forth the procedures for school district applications and administration of grants consistent with application instructions and provisions included in 19 TAC §102.1011, Master Reading Teacher Grant Program, and 19 TAC §102.1013, Master Mathematics Teacher Grant Program.

Christi Martin, senior advisor for education initiatives, has determined that for the first five-year period the new section is in effect there will be fiscal implications for state and local government as a result of enforcing or administering the new section. Implementation of the Master Science Teacher Grant Program is anticipated to begin with the 2005-2006 school year. Funding for the Master Science Teacher Grant Program is included in Rider 50 of the Appropriations Bill for the 2006-2007 biennium introduced during the 79th legislative session. The extent of program implementation will be determined by final approved appropriations.

The agency would incur costs associated with administering the law and the processes provided through the proposed rule. The agency would incur costs in the administration and distribution of grant funds for stipends to local school districts. Costs are anticipated to be similar to those incurred in the implementation of similar grant programs for reading and mathematics. It is anticipated that costs will be accommodated within the agency's budget appropriated for the 2006-2007 biennium.

School districts are not required to participate in this program. However, school districts that choose to apply for funding would likely incur some costs associated with applying for and administering the grant funds, including distributing stipends. The costs of administering grant funds would likely vary among each participating district due to differences in each district's policies for administration of the Master Science Teacher Grant Program. It is not anticipated that such costs would be significant in most districts. School districts with successful applications would realize increased revenue in the form of grant funds for stipends. The amount of increased revenue would vary among districts receiving awards.

The application for stipend funds is administered electronically so that districts can access funds efficiently. Districts may designate master science teachers who qualify for the state stipends to be paid at the end of the school year by completing the online application by April 15 of each year. The districts can amend their applications through April 15 if their circumstances change. It is anticipated that Master Science Teacher grants will be issued beginning in May 2006. Funds are to be transferred electronically by the Comptroller's Office to the districts. The districts then have 30 days in which to pay their master teacher stipends.

Schools would be asked to submit application for funds, documentation of Master Science Teacher certification, documentation of high need status, and reporting of expended funds.

Ms. Martin has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the section will be the implementation of the Master Science Teacher Grant Program. The master science teachers would share their expertise by mentoring fellow teachers and by teaching science to students of identified high-need campuses. The program is intended to increase the science ability of Texas schoolchildren, particularly those on identified high-need campuses. There is anticipated economic cost to persons who are required to comply with the proposed new section. Participation in the Master Science Teacher Grant Program is not a requirement for individual teachers. However, teachers who voluntarily choose to complete a Master Science Teacher preparation program approved by the State Board for Educator Certification would likely incur costs associated with the program. Costs would vary among approved educator preparation programs.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028. All requests for a public hearing on the proposed new section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The new section is proposed under the Texas Education Code, §21.413, which authorizes the commissioner of education to adopt rules as necessary to implement the master science teacher grant program.

The new section implements the Texas Education Code, §21.413.

§102.1015. Master Science Teacher Grant Program.

(a) Under Texas Education Code (TEC), §21.413, a school district may apply to the commissioner of education for grants for high-need campuses identified by the commissioner to be used to pay stipends to certified master science teachers, in accordance with the provisions of this section.

(b) The following terms apply to each school district applicant seeking stipends under the Master Science Teacher Grant Program:

(1) Identified high-need campus. An identified high-need campus is a campus where the percentage of students reported passing the statewide assessment in science averages less than or equal to a percentage designated by the commissioner in the years specified by the commissioner or the percentage of students on a Personal Graduation Plan (PGP) for science averages more than or equal to a percentage designated by the commissioner in the years specified by the commissioner. An identified campus remains eligible for state stipend funds for three years, if sufficient funds are available.

(A) An identified high-need campus does not include:

(i) a discipline alternative education program operated under TEC, §37.008;

(ii) a juvenile justice alternative education program; and

(iii) a campus where fewer than 30 students per year took the statewide assessment in science over the period of time in which data are considered.

(B) For the 2005-2006 school year, identification of high-need campuses will be based on:

(i) the average scores on the 2003-2004 and 2004-2005 spring administration of the Texas Assessment of Knowledge and Skills (TAKS) science test for Grade 10 and exit level for campuses consisting of Grades 9-12;

(ii) the percentage of students in the 2005-2006 school year on a PGP for campuses consisting of Grades 6-8; and

(iii) the average scores on the 2003-2004 and 2004-2005 spring administration of the TAKS science test for Grade 5 for campuses consisting of early childhood (EC)- Grade 5.

(C) For subsequent school years, the TAKS science test score averages for the past three school years for which data are available, not including the school year in which the state stipend is to be paid, will be used to identify a high-need campus.

(2) Primary duties. The primary duties of a master science teacher are:

(A) teaching science; and

(B) serving as a science teacher mentor to other teachers.

(3) Teaching science. Teaching science is performed when a teacher:

(A) applies knowledge of the interrelated components of science, including scientific principles, such as systems and models, properties and patterns, constancy and change; scientific processes, such as inquiry in the laboratory and field, critical thinking and problem-solving; and science concepts, such as relationship between force and motion and interdependence among living systems. The master science teacher understands ethics in science investigation and laboratory and field safety techniques and employs appropriate pedagogy and assessment techniques;

(B) selects, constructs, and administers appropriate science assessments on an ongoing basis and uses the results to design, inform, and adjust science instruction to promote student achievement;

(C) applies knowledge of a range of scientific achievement (e.g., advanced learners, students demonstrating science difficulties) and effective instructional approaches to facilitate and promote science achievement; and

(D) creates a positive learning environment that promotes positive student attitudes toward science and provides equitable opportunities for all students to achieve at a high level.

(4) Science teacher mentor. A science teacher mentor:

(A) provides mentoring and leadership that facilitate appropriate standards-based and research-based science instruction;

(B) communicates and collaborates with educational professionals, parents, and others;

(C) coaches and consults with colleagues;

(D) provides professional development opportunities for faculty; and

(E) makes instructional decisions based on data and supported by evidence from research.

(5) Certified master science teacher. A certified master science teacher is a person who:

(A) has at least three years of teaching experience;

(B) completes satisfactorily a course of instruction approved by the State Board for Educator Certification (SBEC) for the purpose of becoming a master science teacher for Grades EC-4, 4-8, or 8-12;

(C) performs satisfactorily on the master science teacher certification examination for Grades EC-4, 4-8, or 8-12 prescribed by the SBEC; and

(D) has master science teacher certification for the specific grade levels on the campus to which assigned.

(c) A school district may apply to the commissioner for grants for each identified high-need campus as defined in subsection (b)(1) of this section to be used to pay state stipends at the end of the school year to the designated certified master science teachers.

(1) The primary duties of the master science teacher are to teach science and to serve as a science teacher mentor to other teachers for the amount of time and in the manner established by the school district in conformance with the definitions and requirements set forth in subsection (b) of this section.

(2) The application must contain a certification by the school superintendent that the grants will be used only for the purpose set forth in TEC, §21.413.

(3) Applications and reports must be filed with the commissioner during the school year in which a stipend is to be paid in accordance with the application instructions.

(d) The commissioner shall determine, based upon student enrollment, whether a district may receive grants to pay one or two state stipends to certified master science teachers per identified high-need campus.

(1) School districts may receive grants to pay state stipends to two certified master science teachers per identified high-need campus having a large student population as determined annually by the commissioner in the application.

(2) School districts may receive grants to pay state stipends to one certified master science teacher per identified high-need campus having a small student population as determined annually by the commissioner in the application.

(e) An identified high-need campus within a district continues to be eligible for two additional years following the initial year of the grant even if the campus is no longer a high-need campus. The district must continue to pay the stipend to a designated master science teacher who is eligible as defined in subsection (b) of this section and whose primary duties include teaching science and serving as a science teacher mentor as defined in subsection (b)(2) of this section.

(f) Following the initial year of the grant, a district is not required to reapply for a grant for two consecutive years if the district:

(1) notifies the commissioner, in accordance with the application instructions, that the circumstances on which the grant was based have not changed;

(2) notifies the commissioner of eligible teachers continuing to receive state stipends; and

(3) notifies the commissioner of changes in the circumstances on which the grant was based, including:

(A) number of months of the teacher's service under master science teacher certification;

(B) new designated master science teachers on previously unserved identified high-need campuses, as defined in subsection (d) of this section;

(C) changes in designated master science teachers on already served identified high-need campuses; and

(D) additional changes affecting the Master Science Teacher Grant Program, including any information required by the commissioner.

(g) The commissioner shall reduce payments to a school district proportionately to the extent an eligible teacher does not meet the requirements under subsection (b) of this section for the entire school year. In the event a teacher qualifies as a master science teacher for a partial month, the district's written policy will determine how the district counts the partial month (e.g., as no month served or as an entire month served). Only whole months shall be entered on the application by the district on the teacher's behalf.

(h) A district that employs more certified master science teachers than the number of grants available under this section shall designate which certified master science teacher(s) to assign the duties required to receive the state stipend(s).

(1) The designation is based on a written policy adopted by the board of trustees of the district.

(2) The district shall pay a state stipend for only one designated master science teacher per designated slot on an identified high-need campus.

(3) In unforeseen circumstances (e.g., teacher becomes seriously ill and cannot continue), the district may request from the commissioner that another teacher be designated as the new master teacher as an exception to the provisions in this subsection to be considered on a case-by-case basis and only under extreme circumstances.

(4) A decision of the district under this subsection is final and may not be appealed.

(5) The district may use local money to pay additional stipends in amounts determined by the district.

(i) State stipends to certified master science teachers must be paid by local school districts no later than 30 days after receipt of the state grant funds by the school district.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 7, 2005.

TRD-200501007

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: April 17, 2005

For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.6

The Texas Funeral Service Commission (Commission) proposes an amendment to §203.6, concerning Provisional Licensees.

The amendment is proposed because existing subsection (k) is no longer needed after the approval of the commission at the May, 2004 meeting to discontinue the oral exit interviews.

O.C. "Chet" Robbins, Executive Director, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Robbins further has determined that for each of the first five-year period the amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be eliminating the oral exit interviews in order to expedite the licensure of qualified applicants thereby allowing them to be placed into the community sooner. There will be no effect on large, small or micro-businesses. There is no anticipated economic costs to

persons who are required to comply with the amendment as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Mr. Robbins at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax), or electronically to chet.robbins@tfsc.state.tx.us.

The amendment is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

No other statutes, articles, or codes are affected by the proposal.

§203.6. Provisional Licensees.

(a) - (d) (No change.)

(e) Of the 60 cases required for each provisional licensure program, at least 10 must be complete cases and performed and reported during the last three months of the program. A complete funeral directing case consists of all major actions from the time of first call through interment or other disposition of the body; a complete embalming requires the provisional embalmer to handle all major actions included in §203.16 of this title (relating to Minimum Standards for Embalming and Reporting Embalming Procedures) performed on a particular body. Cases performed in mortuary college may count toward the required cases if the college certifies to the commission that the cases were performed.

(f) - (j) (No change.)

~~[(k) Upon completion of a minimum of 12 months and 60 required cases of the provisional license program, each provisional licensee must appear before at least one member of the commission for an oral exit interview in order to demonstrate proficiency related to the duties of a funeral director and/or embalmer. Any person not recommended for licensure must undergo further exit interviews and extensions until recommended for licensure.]~~

~~[(k)]~~ Before a provisional licensee is issued an embalmer's license, the professional licensee must take and pass the national Board Examination with at least a grade of 75%. Both tests are administered by the International Conference of Funeral Service Examining Boards, Inc.

~~[(l)]~~ Before a provisional licensee is issued a regular license, a provisional licensee must take and pass the Texas State Mortuary Law Exam with at least a grade of 75%. The test is administered by the commission.

~~[(m)]~~ If a provisional licensee leaves the employment of a funeral director or embalmer, the funeral director or embalmer must file an affidavit as described in Texas Occupations Code, Section 651.304(d) within fifteen (15) days of employment termination.

~~[(n)]~~ A student enrolled in an accredited mortuary college must have the college forward a letter of enrollment to the commission prior to entering the provisional program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2005.
TRD-200500944

O.C. "Chet" Robbins

Executive Director

Texas Funeral Service Commission

Earliest possible date of adoption: April 17, 2005

For further information, please call: (512) 936-2466



22 TAC §203.16

The Texas Funeral Service Commission (Commission) proposes an amendment to §203.16, concerning Minimum Standards for Embalming and Reporting Embalming Procedures.

The amendment is proposed because existing §203.16 does not have information prescribing the minimum information that should be contained on embalming case reports.

O.C. "Chet" Robbins, Executive Director, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the amendment as proposed.

Mr. Robbins further has determined that for each of the first five-year period the amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be to ensure uniformity on embalming case reports in order determine whether or not minimum standards have been followed for each embalming case. There will be no effect on large, small or micro-businesses. There is no anticipated economic costs to persons who are required to comply with the amendment as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Mr. Robbins at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax), or electronically to chet.robbins@tfsc.state.tx.us.

The amendment is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

No other statutes, articles, or codes are affected by the proposal.

§203.16. Minimum Standards for Embalming and Reporting Embalming Procedures.

(a) - (b) (No change.)

(c) Embalming Case Report

(1) All embalming case reports must contain, at a minimum, all the information on the case-report form published following this subsection. This form is also on file in the commission's offices and may be accessed from the commission's website at www.tfsc.state.tx.us. Staff will make a copy of this form available upon request. Funeral establishments may use other forms, so long as the forms contain all the information on the published form.

(2) A case report shall be completed for each embalming procedure. The completed form shall be retained for 2 years following the procedure date and made available to the commission, upon request.
Figure: 22 TAC §203.16(c)(2)

~~[(e) A report form, approved by the Texas Funeral Service Commission, shall be completed on each case of embalming. The completed form shall be retained for a two-year period and be made available to the Texas Funeral Service Commission, upon request, for inspection.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2005.

TRD-200500945

O.C. "Chet" Robbins

Executive Director

Texas Funeral Service Commission

Earliest possible date of adoption: April 17, 2005

For further information, please call: (512) 936-2466



PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 534. GENERAL ADMINISTRATION

22 TAC §534.3

The Texas Real Estate Commission (TREC) proposes amendments to Chapter 534, General Administration, by adding §534.3, concerning employee training and education. The proposed rule is necessary to comply with Texas Government Code, §§656.041 - 656.049, which require that state agencies adopt rules addressing employee training and education.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for the state as a result of enforcing or administering the rule. There are no anticipated fiscal implications for units of local government. There is no anticipated impact on small businesses, micro businesses, individuals or local or state employment as a result of implementing the rule.

Ms. DeHay also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule regarding employee training and education will be a better understanding by employees of agency policy and procedures regarding compensation for employee training.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The new rule is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101 and Texas Government Code, Chapter 656. No other statute, code or article is affected by the proposed rule.

§534.3. Employee Training and Education.

(a) The commission may use state funds to provide training and education for its employees in accordance with the State Employees Training Act (Texas Government Code, §§656.044 - 656.049).

(b) The training or education shall be related to the duties or prospective duties of the employee.

(c) The commission's training and education program benefits both the commission and the employees participating by:

(1) preparing for technological and legal developments;

(2) increasing work capabilities;

(3) increasing the number of qualified employees in areas for which the commission has difficulty in recruiting and retaining employees; and

(4) increasing the competence of commission employees.

(d) A commission employee may be required to attend, as part of the employee's duties, a training or education program related to the employee's duties or prospective duties.

(e) Approval to participate in a training or education program is not automatic and is subject to the availability of funds within the commission's budget.

(f) The employee training and education program for the commission shall include:

(1) agency-sponsored training provided in-house or by contract;

(2) seminars and conferences;

(3) technical or professional certifications and licenses; and

(4) tuition reimbursement for degree and non-degree program courses.

(g) The administrator or administrator's designee shall develop policies for administering each of the components of the employee training and education program. These policies shall include:

(1) eligibility requirements for participation;

(2) designation of appropriate level of approval for participation; and

(3) obligations of program participants.

(h) Approval to participate in any portion of the commission's training and education program shall not in any way affect an employee's at-will status.

(i) Participation in the training and education program shall not in any way constitute a guarantee or indication of continued employment, nor shall it constitute a guarantee or indication of future employment in a current or prospective position.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2005.

TRD-200500910

Loretta R. DeHay

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: April 17, 2005

For further information, please call: (512) 465-3900



22 TAC §534.4

The Texas Real Estate Commission (TREC) proposes amendments to Chapter 534, General Administration, by adding §534.4, concerning historically underutilized businesses. The

proposed rule is necessary to comply with Texas Government Code, §2161.003. Section 2161.003 of the Government Code requires the Commission to adopt the Texas Building and Procurement Commission's rules on Historically Underutilized Businesses.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for the state as a result of enforcing or administering the rule. There are no anticipated fiscal implications for units of local government. There is no anticipated impact on small businesses, micro businesses, individuals or local or state employment as a result of implementing the rule.

Ms. DeHay also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule will be a decrease in confusion among the vendor community regarding agency rules and procedures for historically underutilized businesses. This should result in a more efficient agency purchasing process.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The new rule is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101 and Texas Government Code, Chapter 2161. No other statutes, articles, or codes are affected by the proposed rule.

§534.4. Historically Underutilized Businesses Program.

Pursuant to Chapter 2161, §2161.003, Texas Government Code, the commission adopts by reference the rules of the Texas Building and Procurement Commission in 1 TAC §§111.11 - 111.28, relating to the Historically Underutilized Business Program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2005.

TRD-200500911

Loretta R. DeHay

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: April 17, 2005

For further information, please call: (512) 465-3900



22 TAC §534.5

The Texas Real Estate Commission (TREC) proposes amendments to Chapter 534, General Administration, by adding §534.5, concerning bid opening and tabulation. The proposed rule is necessary to comply with Texas Government Code, §2156.005. Section 2156.005 of the Government Code requires the Commission to adopt the Texas Building and Procurement Commission's rules on Bid Opening and Tabulation.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for the state as a result of enforcing or administering the rule. There are no anticipated fiscal implications for units of local government. There is no anticipated impact on small businesses, micro businesses, individuals or local or state employment as a result of implementing the rule.

Ms. DeHay also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule will be a decrease in confusion among the vendor community regarding agency rules and procedures for bid opening and tabulation. This should result in a more efficient agency purchasing process.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The new rule is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101 and Texas Government Code, Chapter 2156. No other statutes, articles, or codes are affected by the proposed rule.

§534.5. Bid Opening and Tabulation.

(a) The commission adopts by reference the rules of the Texas Building and Procurement Commission in 1 TAC §113.5(b) relating to bid submission, bid opening, and tabulation.

(b) The adoption of this rule is required by Texas Government Code, §2156.005(d).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2005.

TRD-200500912

Loretta R. DeHay

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: April 17, 2005

For further information, please call: (512) 465-3900



22 TAC §534.6

The Texas Real Estate Commission (TREC) proposes amendments to Chapter 534, General Administration, by adding §534.6, concerning negotiation and mediation of certain contract disputes. The proposed rule is necessary to comply with Texas Government Code, §2260.052. Section 2260.052 of the Government Code authorizes the Commission to adopt the Office of the Attorney General's rules on negotiation and mediation of certain contracts.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for the state as a result of enforcing or administering the rule. There are no anticipated fiscal implications for units

of local government. There is no anticipated impact on small businesses, micro businesses, individuals or local or state employment as a result of implementing the rule.

Ms. DeHay also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule will be a decrease in confusion among the vendor community regarding agency rules and procedures for negotiation and mediation of certain contract disputes. This should result in a more efficient agency purchasing process.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The new rule is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101 and Texas Government Code, Chapter 2260. No other statutes, articles, or codes are affected by the proposed rule.

§534.6. Negotiation and Mediation of Certain Contract Disputes.

The commission adopts by reference the rules of the Office of the Attorney General in Title 1, Part 3, Texas Administrative Code, Chapter 68 relating to Negotiation and Mediation of Certain Contract Disputes to comply with the requirements of Texas Government Code, Chapter 2260, §2260.052(c). The rules set forth a process to permit parties to structure a negotiation or mediation in a manner that is most appropriate for a particular dispute regardless of the contract's complexity, subject matter, dollar amount, or method and time of performance.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2005.

TRD-200500913

Loretta R. DeHay

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: April 17, 2005

For further information, please call: (512) 465-3900



22 TAC §534.7

The Texas Real Estate Commission (TREC) proposes amendments to Chapter 534, General Administration, by adding §534.7, concerning vendor protest procedures. The proposed rule is necessary to comply with Texas Government Code, §2155.076. Section 2155.076 of the Government Code requires that the agency's rules for vendor protest procedures must be consistent with rules adopted by the Texas Building and Procurement Commission.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for the state as a result of enforcing or administering the rule. There are no anticipated fiscal implications for units

of local government. There is no anticipated impact on small businesses, micro businesses, individuals or local or state employment as a result of implementing the rule.

Ms. DeHay also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule will be a decrease in confusion among the vendor community regarding agency rules and procedures for vendor protest procedures. This should result in a more efficient agency purchasing process.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The new rule is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101 and Texas Government Code, Chapter 2155. No other statutes, articles, or codes are affected by the proposed rule.

§534.7. Vendor Protest Procedures.

(a) The commission adopts by reference the rules promulgated by the Texas Building and Procurement Commission regarding purchasing protest procedures as set forth in 1 TAC §111.3.

(b) The commission shall maintain documentation about the purchasing process to be used in the event of a protest by maintaining current information regarding applicable statutory law, administrative rules, and guidelines affecting the purchasing process.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2005.

TRD-200500914

Loretta R. DeHay

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: April 17, 2005

For further information, please call: (512) 465-3900



**PART 24. TEXAS BOARD OF
VETERINARY MEDICAL EXAMINERS**

**CHAPTER 571. LICENSING
SUBCHAPTER C. LICENSE RENEWALS**

22 TAC §571.54

The Texas Board of Veterinary Medical Examiners ("Board") proposes amendments to §571.54 concerning Retired License Status. The current section contains the requirements for reinstating a veterinarian's license to practice veterinary medicine after the veterinarian has retired. The new requirements for reinstatement following retirement distinguish between two types of reinstatement requests: those that occur within the same license renewal

period in which the licensee retires, and those that occur after the initial renewal period is expired. If a licensee requests reinstatement during the initial renewal period, the licensee must pay required fees and comply with continuing education requirements. If a licensee requests reinstatement after the first renewal period has expired, the licensee must petition the Board for reinstatement, complete an application, and submit to reexamination and meet all requirements for an original license. Prior to expiration of the retiree's initial renewal period, the Board shall inform the retiree that he may apply for reinstatement, or remain in retired status. If the retiree elects to remain in retired status, the retiree shall no longer receive license renewal notices and will be not be required to renew his retired license.

Mr. Ron Allen, Executive Director, has determined that for the first five-year period the amended section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Allen has also determined that for the first five years the section is in effect the public benefit anticipated as a result of enforcing the amended section will be to reduce agency expenditures by eliminating renewal notices and bookkeeping associated with renewals for those retirees who elect to remain in retired status. There will be no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the amended section as proposed.

Comments on the proposed amendments may be submitted in writing to Julie Barker, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701, phone (512) 305-7555, fax (512) 305-7556, and must be received by May 2, 2005.

The amendments are proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

The amendments affect the Veterinary Licensing Act, Occupations Code, §§801.251-.258 which set out requirements for licensing.

§571.54. *Retired License Status.*

(a) "Retirement" means the voluntary and permanent conclusion of a licensee's practice of veterinary medicine.

(b) If a licensee retiring for the first time requests reinstatement of his license in the same renewal year in which he retired, the licensee must:

(1) pay the annual renewal fee plus a \$25 administrative processing fee to reinstate the license; and

(2) comply with the following continuing education requirements:

(A) If a retired licensee has maintained an annual average of 17 hours of approved continuing education, no additional continuing education hours will be required.

(B) If a retired licensee has maintained an annual average of less than 17 hours of approved continuing education, the retired licensee must complete 34 hours of continuing education in the twelve months immediately following reinstatement.

(c) If a licensee has been retired for longer than one renewal period, the retired licensee may reinstate the license by :

(1) petitioning the Board in writing for reinstatement and completing an examination for reinstatement application with supporting documentation and fees; and

(2) submitting to reexamination and complying with all requirements for obtaining an original license. At the discretion of the Board, the petitioner may be required to take and pass the NAVLE prior to applying for and taking the SBE.

(d) By no later than 30 days before the end of the current renewal year in which a licensee's license is retired for the first time, the Board shall inform the retired licensee that he or she may:

(1) apply to reinstate the license in accordance with (b) above; or

(2) remain in retired status.

(e) The retired licensee shall notify the Board of his or her decision by no later than the end of the current renewal year in which the licensee's license is retired for the first time.

(f) If the retired licensee decides to remain in retired status, he or she will no longer receive license renewal notices and will not be required to renew his or her retired license.

{The Board views retirement as the conclusion of a career in veterinary medicine. Therefore, if a person's license has been permanently and totally retired for longer than one year, the license may be reinstated by:}

{(1) petitioning the board in writing for reinstatement, and completing an Examination for Reinstatement application with supporting documentation and fee(s):}

{(2) submitting to reexamination and complying with the requirement and procedures for obtaining an original license. At the discretion of the board, the petitioner may be required to take and pass the North American Veterinary Licensing Examination (NAVLE) prior to applying for and taking the SBE.}

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2005.

TRD-200500949

Julie A. Barker

Executive Assistant

Texas Board of Veterinary Medical Examiners

Proposed date of adoption: June 9, 2005

For further information, please call: (512) 305-7555



CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER E. PRESCRIBING AND/OR DISPENSING MEDICATION

22 TAC §573.40

The Texas Board of Veterinary Medical Examiners ("Board") proposes amendments to §573.40 concerning Labeling of Medications Dispensed. This section contains the requirements for labeling of medications dispensed by veterinarians. The section prohibits the dispensing of unlabeled medications to a client and patient. The amendments add the requirement that a dispensing

veterinarian's telephone number, including zip code, be included on the label. This addition is desirable because of the increasing mobility of clients who may need to quickly locate the dispensing veterinarian for their pet.

Mr. Ron Allen, Executive Director, has determined that for the first five-year period the amended section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Allen has also determined that for the first five years the section is in effect the public benefit anticipated as a result of enforcing the amended section will be to allow a veterinarian's client or another veterinarian to more quickly locate the dispensing veterinarian. There will be no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the amended section as proposed.

Comments on the proposed amendments may be submitted in writing to Julie Barker, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701, phone (512) 305-7555, fax (512) 305-7556, and must be received by May 2, 2005.

The amendments are proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

The amendments affect the Veterinary Licensing Act, Occupations Code, §801.351, which requires the existence of a veterinarian-client-patient relationship prior to prescribing treatment of animals.

§573. 40. Labeling of Medications Dispensed.

(a) A veterinarian shall ~~[It is unprofessional conduct for a veterinarian to fail to]~~ affix labels to all unlabeled containers containing any medication dispensed and to all factory labeled containers that contain prescription (legend) drugs and/or controlled substances dispensed. The label must be affixed to the immediate container and include:

- (1) the veterinarian's name, address, and telephone number (including area code); [name and address of the veterinarian (and telephone number if drug is controlled substance)]
- (2) date of delivery or dispensing;
- (3) patient/client name (and address if drug is a controlled substance);
- (4) species of the animal;
- (5) name, strength, and quantity of the drug dispensed;
- (6) directions for use; and
- (7) cautionary statements as required by law, i.e. not for human consumption, poisonous, withdrawal periods, etc.

(b) If the ~~[size of the]~~ immediate container is too small ~~[insufficient]~~ to be labeled, the small container shall be enclosed within another container large enough to be labeled.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2005.
TRD-200500948

Julie A. Barker
Executive Assistant
Texas Board of Veterinary Medical Examiners
Proposed date of adoption: June 9, 2005
For further information, please call: (512) 305-7555



CHAPTER 575. PRACTICE AND PROCEDURE

22 TAC §575.26

The Texas Board of Veterinary Medical Examiners ("Board") proposes amendments to §575.26 concerning Complaint Form. This section sets out the contents of a complaint form that is used by the public to file complaints against veterinarians. The amendments correct the Board's address on the form and request persons requiring auxiliary aids or services in filing the complaint to contact a toll-free number or the Board's offices. The amendments also request that the complainant submit details of the complaint and list events in chronological order.

Mr. Ron Allen, Executive Director, has determined that for the first five-year period the amended section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Allen has also determined that for the first five years the section is in effect the public benefit anticipated as a result of enforcing the amended section will be to provide the public with accurate, up-to-date information on how to file a complaint with the Board. There will be no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the amended section as proposed.

Comments on the proposed amendments may be submitted in writing to Julie Barker, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701, phone (512) 305-7555, fax (512) 305-7556, and must be received by May 2, 2005.

The amendments are proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

The amendments affect the Veterinary Licensing Act, Occupations Code, §801.203, which deals with complaint procedures.

§575.26. Complaint Form.

The Board adopts ~~[shall adopt]~~ the following form as its official complaint form. The form, along with a "Consumer Information" pamphlet, explaining the Board's ~~[Board]~~ functions and complaint process, will be furnished to any person who wishes to file a complaint with the Board.

Figure: 22 TAC §575.26

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2005.

TRD-200500947
Julie A. Barker
Executive Assistant
Texas Board of Veterinary Medical Examiners
Proposed date of adoption: June 9, 2005
For further information, please call: (512) 305-7555

◆ ◆ ◆
TITLE 34. PUBLIC FINANCE

**PART 4. EMPLOYEES RETIREMENT
SYSTEM OF TEXAS**

**CHAPTER 75. HAZARDOUS PROFESSION
DEATH BENEFITS**

34 TAC §75.1

The Employees Retirement System of Texas ("ERS") proposes an amendment to 34 Texas Administrative Code, Chapter 75, §75.1, concerning the documents that shall be submitted in an application for benefits under Texas Government Code, Chapter 615.

Section 75.1 currently requires that a certified copy of the autopsy report shall be submitted for benefits under Chapter 615. The proposed amendment to §75.1 requires the autopsy report only if requested by the System. This change is being made based on a review of Chapter 615 application processes by ERS' internal auditor. The review revealed that the voluminous autopsy reports are not always needed to process an application for benefits. Under the proposed amendment, the autopsy report would be requested by the System only when ERS determines that it is necessary.

Paula A. Jones, General Counsel, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment, and small businesses and individuals will not be affected.

Ms. Jones also determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the amendment would be the elimination of an administrative requirement that is not necessary for all applications for benefits under Chapter 615. There are no known or anticipated economic costs to persons who are required to comply with the amendment as proposed.

Comments on the proposed amendment may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may e-mail Ms. Jones at pjones@ers.state.tx.us. The deadline for receiving comments is April 18, 2005, at 10:00 a.m.

This amendment is proposed in accordance with Texas Government Code, §615.002, which provides authorization for the ERS board of trustees to adopt rules necessary to administer Chapter 615.

No other statutes are affected by this proposed amendment.

§75.1. Filing of Claims.

(a) - (b) (No change.)

(c) The following documents or copies of the documents shall be submitted in an application for benefits under Texas Government Code, Chapter 615, unless the executive director waives their submission:

(1) - (2) (No change.)

(3) a certified copy of the autopsy report, only if requested by the system [if any];

(4) - (12) (No change.)

(d) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 7, 2005.

TRD-200501030

Paula A. Jones

General Counsel

Employees Retirement System of Texas

Earliest possible date of adoption: April 17, 2005

For further information, please call: (512) 867-7421

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CHAPTER 85. FLEXIBLE BENEFITS

34 TAC §§85.1, 85.3, 85.5, 85.7, 85.9, 85.11, 85.13

The Employees Retirement System of Texas (ERS) proposes changes to 34 Texas Administrative Code §§85.1, 85.3, 85.5, 85.7, 85.9, 85.11 and 85.13 concerning Definitions, Eligibility and Participation, Benefits, Enrollment, Payment of Claims from Reimbursement Accounts, Administration and Funding. These sections are amended to define and direct the administration of the State of Texas Employees Flexible Benefit Program (TexFlex). These sections also comply with and conform to the provisions of the Internal Revenue Code, as amended, and the Texas Insurance Code, Chapter 1551, specifically §1551.206. Section 85.1 adds a definition of Third Party Administrator. Section 85.3 makes changes to participation requirements with regard to the process of becoming a participant. Section 85.5 makes changes to the references to the plan, specifying that this chapter, as amended, constitutes the TexFlex Plan, comprised of a dependent care reimbursement plan, a health care reimbursement plan, and an insurance premium conversion plan. Section 85.7 makes changes to the enrollment process by including electronic enrollment. Section 85.9 makes changes to the claims payment process by specifying the TPA's responsibility in the adjudication of claims. Section 85.11 makes changes with regard to the overall administration of the TexFlex program by defining the roles and responsibilities of both the plan administrator and the TPA to whom certain responsibilities are delegated.

Paula A. Jones, General Counsel, has determined that for the first five year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules, and small businesses will not be affected.

Ms. Jones also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be simplified administration of the Texas Employees Flexible Benefit Program in accordance with recent changes to federal law. There are no known or anticipated economic costs to persons who are required to comply with the rules as proposed, except for any costs associated with continued participation in the TexFlex program.

Comments on the proposed rule amendments may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or email Ms. Jones at pjones@ers.state.tx.us. The deadline for receiving comments is April 18, 2005, at 10:00 a.m.

The amendments are proposed under Texas Insurance Code §1551.052, which provides the ERS Board of Trustees the authority to adopt rules necessary to carry out its statutory duties and responsibilities under the Texas Employees Group Benefits Act.

No other statutes are affected by these proposed amendments.

§85.1. *Introduction and Definitions.*

(a) Summary. The purpose of these rules is to govern the flexible benefits program. These rules constitute the Plan document for the State of Texas Employees Flexible Benefit Program (TexFlex). The flexible benefits plan (the plan) includes reimbursement account arrangements with optional benefits available for selection by participants as described in the plan and these rules. The plan is intended to be qualified under the Internal Revenue Code (the Code), §125, as amended from time to time, and is intended to continue as long as it qualifies under §125 and is advantageous to the state and institutions of higher education employees. Optional benefits offered under the plan for individual selection consist only of a choice between cash and certain statutory nontaxable fringe benefits as defined in the Code, §125, and regulations promulgated under the Code, §125.

(b) (No change.)

(c) Definitions. The following words and terms when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise, and wherever appropriate, the singular includes the plural, the plural includes the singular, and the use of any gender includes the other gender.

(1) - (5) (No change.)

(6) Compensation--A participant's base salary, including amounts that would otherwise qualify as compensation but are not received directly by the participant pursuant to a good faith, voluntary, written or electronic salary reduction agreement in order to finance payments to a deferred compensation or tax sheltered annuity program specifically authorized by state law or to finance benefit options under this plan, plus longevity and hazardous duty pay and including non-monetary [nonmonetary] compensation, the value of which is determined by the Employees Retirement System of Texas, but excluding overtime pay.

(7) Debit Card--A bank issued convenience card or similar technology approved by the plan administrator and permitted to be used by participants as an optional method to pay for eligible transactions. Use of the card is governed by the plan administrator and issuing financial institution. The card is ~~[sometimes]~~ referred to as the TexFlex Convenience Card.

(8) - (28) (No change.)

(29) Plan--The flexible benefits plan established and adopted by the board of trustees pursuant to the laws of the State of Texas and any amendments which may be made to the plan from time to time. The plan is ~~[sometimes]~~ referred to herein as TexFlex, and is comprised of a dependent care reimbursement plan, a health care reimbursement plan and an insurance premium conversion plan.

(30) - (35) (No change.)

(36) Third Party Administrator or TPA--The vendor, administrator or firm selected by the plan administrator to perform the day-to-day administrative responsibilities of the TexFlex program for participants of the Texas Employees Group Benefits Program who enroll in either the health care reimbursement plan, dependent care reimbursement plan or both.

§85.3. *Eligibility and Participation.*

(a) Dependent care reimbursement plan ~~[plans]~~.

(1) (No change.)

(2) Participation.

(A) An employee who is eligible under paragraph (1) of this subsection may elect to participate by completing and submitting an election form either in writing or electronically on, or within 30 days after, the date on which the employee begins active duty. An employee, upon executing an election form for participation, either in writing or electronically, shall be deemed to have consented to and be bound by all the terms, conditions, and limitations of the plan, any and all amendments hereto, any administrative rules adopted by the plan administrator, and any decision or determinations made by the plan administrator with respect to the participant's eligibility, obligations, rights and benefits available under the plan. An election made on the date on which the employee begins active duty becomes effective on that date. An election made after the date on which the employee begins active duty becomes effective on the first day of the month following the date on which the employee begins active duty.

(B) - (D) (No change.)

(E) The plan administrator shall maintain and update the participant enrollment records. Any and all changes will be communicated to the TPA via weekly file transfer protocol (FTP), tapes or other selected media.

(3) (No change.)

(b) Health care reimbursement plan.

(1) (No change.)

(2) Participation.

(A) An employee who is eligible under paragraph (1) of this subsection may elect to participate by completing and submitting an election form either in writing or electronically on, or within 30 days after, the date on which the employee begins active duty. An employee, upon executing an election form for participation, either in writing or electronically, shall be deemed to have consented to and be bound by all the terms, conditions, and limitations of the plan, any and all amendments hereto, any administrative rules adopted by the plan administrator, and any decision or determinations made by the plan administrator with respect to the participant's eligibility, obligations, rights and benefits available under the plan. An election made on the date on which the employee begins active duty becomes effective on that date. An election made after the date on which the employee begins active duty becomes effective on the first day of the month following the date on which the employee begins active duty.

(B) - (D) (No change.)

(E) The plan administrator shall maintain and update the participant enrollment records. Any and all changes will be communicated to the TPA via weekly file transfer protocol (FTP), tapes or other selected media.

(3) Duration of participation.

(A) - (C) (No change.)

(D) Notwithstanding any provision to the contrary in this Plan, if an employee goes on a qualifying unpaid leave under the Family Medical Leave Act (FMLA) ~~[FMLA]~~, to the extent required by the FMLA, the plan administrator ~~[Plan Administrator]~~ will continue to maintain the employee's health care reimbursement account on the same terms and conditions as though he were still an active employee (i.e., the plan administrator ~~[Plan Administrator]~~ or its designee will continue to provide benefits to the extent the employee opts to continue

his coverage). If the employee opts to continue his coverage, the employee shall ~~[may]~~ pay his or her contribution ~~[share of the premium]~~ in the same manner as a participant on the non-FMLA leave, including payment with after-tax dollars while on leave. The employee may also be given the option to pre-fund ~~[pre-pay]~~ all or a portion of the contribution ~~[his share of the premium]~~ for the expected duration of the leave on a pre-tax salary reduction basis out of his pre-leave compensation by making a special election to that effect prior to the date such compensation would normally be made available to him (provided, however, that pre-tax dollars may not be utilized to fund coverage during the next plan year).

§85.5. *Benefits.*

(a) (No change.)

(b) Health care reimbursement plan.

(1) (No change.)

(2) Maximum benefit available. Subject to the limitations set forth in these rules, hereafter referred to as ~~[and in]~~ the plan, to avoid discrimination, the maximum amount of flexible benefit dollars that an employee may receive in any plan year for health care expenses under the health care reimbursement plan is \$5,000. Except as otherwise provided in this paragraph, the monthly maximum salary reduction amount, exclusive of any administrative fees, may not exceed \$416 per month. An employee may prepay the health care election amounts for the remainder of the plan year in anticipation of termination, retirement, or a period of leave without pay. An employee classified as a nine-month employee and who receives compensation in fewer than 12 months shall redirect the annual election amount in nine equal monthly amounts.

(c) Dependent care reimbursement plan.

(1) (No change.)

(2) Maximum benefit available.

(A) Subject to any limitations imposed by these rules, hereafter referred to as ~~[and]~~ the plan, to avoid discrimination, the maximum amount that an employee may receive in any plan year in the form of payment of or reimbursement for dependent care expenses under the dependent care reimbursement plan, is the lesser of:

(i) - (iii) (No change.)

(B) (No change.)

§85.7. *Enrollment.*

(a) Election of benefits.

(1) An eligible employee may elect to ~~[or not to]~~ participate in the health care and or dependent care reimbursement accounts within the flexible benefits plan by making an election and executing an election form or enrolling electronically.

(2) (No change.)

(3) By enrolling in the plan ~~[executing an election form]~~, the employee agrees to a reduction in compensation or agrees to after-tax payments equal to the participant's share of the cost and any fees for each reimbursement account selected.

(4) - (5) (No change.)

(b) (No change.)

(c) Benefit election irrevocable except for qualifying life event.

(1) An election to participate shall be irrevocable for the plan year unless a qualifying life event occurs, and the ~~[a]~~ change in

election is consistent with the qualifying life event. The plan administrator may require documentation in support of the qualifying life event.

(2) - (4) (No change.)

(d) (No change.)

(e) Forfeiture of account balances.

(1) The amount credited to a participant's reimbursement account for each benefit election for any plan year will be used to reimburse or pay qualified expenses incurred during the eligible employee's period of coverage in such plan year, if the claim is electronically adjudicated or if the participant files a correctly completed claim for reimbursement on or before December 31 following the close of the plan year.

(2) (No change.)

(f) (No change.)

§85.9. *Payment of Claims from Reimbursement Accounts.*

(a) Claim for reimbursement.

(1) (No change.)

(2) Claims shall be paid to the extent of available flexible benefit dollars allocable to the applicable type of expenses and shall only be paid out of flexible benefit dollars for the plan year in which the expense was incurred. The TPA shall compare the participant's available balance and the amount of the expense to make certain that claims are paid according to the provisions of the Code and these rules.

(3) (No change.)

(4) Claims shall be submitted in a manner prescribed ~~[on forms provided]~~ by the Employees Retirement System of Texas or its designee, accompanied by such bills, receipts or other proof of incurring the expense as the plan administrator or its designee may require.

(5) A claim form must be submitted each time reimbursement or payment is requested, unless using the debit card. [Reimbursements or payments made using the debit card may require additional supporting documentation as may be requested by the plan administrator or its designee.]

(6) The dependent care and health care reimbursement accounts are separate accounts, and funds from one account may not be used to reimburse expenses of the other account.

(b) Debit Card transactions.

(1) Debit card payments for eligible expenses incurred during an employee's period of coverage in the plan year may occur at any time during the plan year, but not later than August 31st ~~[31]~~ or the last day of the plan year.

(2) Transactions shall be processed to the extent of available flexible benefit dollars allocable to the applicable type of expenses and shall only be paid out of flexible benefit dollars for the plan year in which the expense was incurred. The TPA shall compare the participant's available balance and the amount of the expense to make certain that claims are paid according to the provisions of the Code and these rules.

(3) - (4) (No change.)

(5) Reimbursements or payments made using the debit card may require additional supporting documentation as may be requested by the plan administrator or its designee, and the participant must maintain his own records to substantiate the eligibility of all expenses for individual income tax purposes, if necessary. [The dependent care and

health care reimbursement accounts are separate accounts; and funds from one account may not be used to reimburse expenses of the other.]

(c) - (d) (No change.)

§85.11. Administration.

(a) Plan administration. The flexible benefits plan is administered by the board of trustees of the Employees Retirement System of Texas. The board of trustees of the Employees Retirement System of Texas may designate and contract with a TPA to perform the day-to-day administrative responsibilities of the TexFlex plan. The TPA shall perform its duties as specified in its contract with the plan administrator, the Code, rules and all applicable state and federal laws and regulations.

(b) Plan administrator.

(1) The plan administrator shall administer all aspects of the plan.

(2) The plan administrator shall:

(A) make decisions on administrative matters concerning the plans;

(B) adopt and amend rules pursuant to the authority granted in Chapter 1551 and ensure that all rules, forms and procedures are consistent with state and federal law;

(C) enter into necessary contracts;

(D) take whatever action that it deems necessary to ensure compliance with applicable state and federal laws and regulations and the sections in this chapter; and

(E) review and approve all marketing materials or correspondence from the TPA to participants prior to publication or distribution.

(c) Third Party Administrator (TPA). The TPA shall perform all day-to-day administrative duties as assigned by the plan administrator.

(d) Miscellaneous provisions.

(1) The participation in the plan of an employee, is subject to changes in applicable state and federal laws and regulations, and the sections in this chapter.

(2) The plan year begins on September 1 of each year and ends on August 31. The grace period for filing claims for services used during the plan year ends on December 31.

(3) The mailing address of the plan administrator is: Plan Administrator, TexFlex Plan, Employees Retirement System of Texas, P. O. Box 13207, Austin, Texas 78711-3207.

(4) If a provision in the sections in this chapter conflicts with a federal law, rule, or regulation governing the plan, then the law, rule, or regulation prevails over the provision.

(5) The participation of an employee in the plan does not give the employee a legal or equitable right against the participant's employing state agency, institution of higher education, the plan administrator, TPA or the State of Texas except as provided in the sections in this chapter. The plan does not affect the terms of employment between a participant and the participant's employing state agency or institution of higher education.

(6) If a time limit is expressed in terms of a number of days and the last day of the time limit falls on a weekend or holiday recognized by the State of Texas for observance by state employees, the last day of the time period shall be the first business day after the weekend or holiday.

(7) The sections in this chapter prevail over any document used in the administration of the plan that has provisions or requirements which conflict with the sections.

§85.13. Funding.

(a) (No change.)

(b) Contributions.

(1) Contributions to the flexible benefits plan by active duty employees may be made only through payroll salary reduction [redirection]. An employee who elects to participate in the health care and dependent care reimbursement plans must authorize, on an election form, the exact amount of salary reduction, in addition to any monthly administrative fee.

(2) (No change.)

(3) The minimum amount a participant [an employee] may elect to reduce his salary on a monthly basis [redirection monthly] for each reimbursement account is \$15. The maximum amount an employee may elect to reduce his salary on a monthly basis [redirection monthly] for each reimbursement account is limited to the amount stipulated in §85.5(b) and (c) of this title (relating to Benefits). Any administrative fee for a reimbursement account is in addition to these minimum and maximum amounts.

(4) When a participant receives no salary in a pay period, no salary reduction [redirection] will be made for that pay period and no catch-up salary reduction [redirection] will subsequently be permitted, except as described in §85.9(d)(2) of this title (relating to Payment of Claims from Reimbursements Accounts) for health care reimbursement account participants.

(5) In situations where there are insufficient salary dollars to fund the amount of the salary reduction [redirections] and fees, no salary reduction [redirection] will be made, except as indicated in paragraph (6) of this subsection, for that pay period and no catch-up reduction [redirection] will subsequently be permitted, except as described in §85.9(d)(2) of this title (relating to Payment of Claims from Reimbursement Accounts) for health care reimbursement account participants.

(6) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 7, 2005.

TRD-200501029

Paula A. Jones

General Counsel

Employees Retirement System of Texas

Earliest possible date of adoption: April 17, 2005

For further information, please call: (512) 867-7421

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34 TAC §85.4, §85.12

The Employees Retirement System of Texas (ERS) proposes new 34 Texas Administrative Code §85.4 and §85.12, concerning Separate Plan Descriptions and Plan Qualification.

These sections are added to define and direct the administration of the State of Texas Employees Flexible Benefit Program (TexFlex). These sections also comply with and conform to the provisions of the Internal Revenue Code, as amended, and the Texas Insurance Code, Chapter 1551, specifically §1551.206.

Section 85.4 specifies that provisions of this chapter constitute the separate plans for the dependent care reimbursement plan, health care reimbursement plan and premium redirection plan. Section 85.12 adds information concerning the nondiscriminatory nature of the plan and the responsibility of the plan administrator to act if it determines that any discrimination in favor of highly compensated employees described under any applicable provision of the Code regarding such discrimination has occurred.

Paula A. Jones, General Counsel, has determined that for the first five year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules, and small businesses will not be affected.

Ms. Jones also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be simplified administration of the Texas Employees Flexible Benefit Program in accordance with recent changes to federal law. There are no known or anticipated economic costs to persons who are required to comply with the rules as proposed, except for any costs associated with continued participation in the TexFlex program.

Comments on the proposed new rules may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or email Ms. Jones at pjones@ers.state.tx.us. The deadline for receiving comments is April 18, 2005, at 10:00 a.m.

The amendments are proposed under Texas Insurance Code §1551.052, which provides the ERS Board of Trustees the authority to adopt rules necessary to carry out its statutory duties and responsibilities under the Texas Employees Group Benefits Act.

No other statutes are affected by these proposed new sections.

§85.4. Separate Plans.

(a) Dependent care reimbursement plan--A separate plan under the Code, §129, adopted by the board of trustees, and designed to provide payment or reimbursement for dependent care expenses as described in §85.5(c) of this title (relating to Benefits). The following sections of this chapter constitute the plan: §§85.1, 85.3(a), 85.5(a), 85.5(c), 85.7, 85.9, 85.11, 85.12, 85.13, 85.15, 85.17, and 85.19.

(b) Health care reimbursement plan--A separate plan, under the Code, §105, adopted by the board of trustees, and designed to provide health care expense reimbursement as described in §85.5(b) of this title (relating to Benefits). The following sections of this chapter constitute the plan: §§85.1, 85.3(b), 85.5(a), 85.5(b), 85.7, 85.9, 85.11, 85.12, 85.13, 85.15, 85.17, and 85.19.

(c) Insurance Premium Conversion Plan--A separate plan under §105(b) of the Code designed to provide insurance premium conversion as described in §81.7(f). The Insurance Premium Conversion Plan is intended to comply with the Internal Revenue Code, §79 and §106.

§85.12. Plan Qualification.

(a) These plans, the benefits provided thereunder, or contributions made thereto, shall be in compliance with all applicable Code provisions and regulations promulgated thereunder, as amended from time to time, regarding nondiscrimination, eligibility, and plan qualification requirements.

(b) In the event the plan administrator determines that any discrimination in favor of highly compensated employees, as defined in

Internal Revenue Code §414(q) or under any applicable provision of the Code regarding discrimination, has occurred or may occur, the plan administrator shall be authorized to cause the election made by any participants to be modified to the extent necessary to avoid or cure such discrimination. Such participants participating herein shall be deemed, upon executing the requisite application for participation, to have expressly consented to any modification of the application and salary conversion agreement deemed necessary by the plan administrator to prevent discrimination from occurring.

(c) Although these plans are intended to be fully qualified under the Code, neither the employer, the plan administrator, employees, the state of Texas, nor any agent or representative thereof, represents that these plans, the benefits provided thereunder, or contributions made thereto, at any particular point in time do not discriminate in favor of highly compensated employees, as determined in accordance with applicable provisions of the Code and regulations promulgated thereunder. The employer, the plan administrator, the state of Texas and any agent or representative thereof shall be held harmless by any employee, participant, their representatives, heirs, beneficiaries, administrators, or assigns from any and all tax liability of any nature that might arise by reason of these plans being deemed discriminatory at any time and in any regard or by reason of plan qualification requirements.

(d) In the event any portion or all of a benefit or benefits becomes taxable hereunder, by reason of these plans being deemed discriminatory, such benefit shall be treated as received or accrued in the taxable year of the participant or key employee in which the plan year ends unless applicable law requires inclusion in income at some other time, in which case, such law shall be controlling.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 7, 2005.

TRD-200501028

Paula A. Jones

General Counsel

Employees Retirement System of Texas

Earliest possible date of adoption: April 17, 2005

For further information, please call: (512) 867-7421



CHAPTER 87. DEFERRED COMPENSATION

34 TAC §§87.1, 87.3, 87.5, 87.9, 87.15, 87.17, 87.19, 87.33

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code §§87.1, 87.3, 87.5, 87.9, 87.15, 87.17, 87.19, and 87.33 concerning the Deferred Compensation Plan as established in Tex. Gov't Code Chapter 609. All referenced Sections include changes required due to the Internal Revenue Service's (IRS) Revenue Procedure 2004-56

The amendments to §§87.1 through 87.33 are needed to update the plan rules, to clarify plan requirements, and to comport with federal law and administrative requirements, including new IRS regulations.

Section 87.1 revises certain definitions due to changes in those federal regulations and model provisions in the Rev. Proc. 2004-56.

Sections 87.3, 87.5 and 87.33 changes adjust the annual deferral limit to \$14,000 for 2005, per federal law. Section 87.3(c)(8)

includes new information on non-assignability of participant or beneficiary accounts.

Section 87.5(g) adjusts the over age 50 catch-up limits to \$4,000 for 2005, per federal law. Other changes in Section 87.5 include amendments recommended by Rev. Proc. 2004-56 regarding participant deferrals, disability, and military time.

Section 87.9 clarifies the identity of participants that will be contacted by the plan administrator to submit a prior funds transfer form for the disposition of deferrals and investment income.

Section 87.15(d)(3)(A) has minor modifications to conform to IRS model amendments on plan to plan transfers and references the Income Tax Regulations.

Sections 87.17(a) - (e) and 87.33(g) changes clarify the purchase of service credit within the same state or another state, and allow service purchase through ERS, the Teacher Retirement System of Texas, the Judicial Retirement System of Texas Plan I or Plan II or any other retirement plan. In addition, Section 87.17 includes reference to the Income Tax Regulations and clarifies distribution requirements, including qualified domestic relations orders, unforeseeable emergencies, one-time elections, and loans. Section 87.17 revised the wording on dependent, which was clarified due to the amended §152(a) of the Internal Revenue Code and the Working Families Tax Relief Act of 2004.

Section 87.19 changes require plan vendors to report by the 5th of September, rather than 15th of September for the special end of the fiscal year (August 31st) report.

Section 87.33 clarifies the purchase of service credit to comply with revisions in Rev. Proc. 2004-56.

The above changes are required to clarify plan requirements, and to comply with federal law and regulations.

Ms. Paula A. Jones, General Counsel, Employees Retirement System of Texas, has determined that for the first five year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules, and, to her knowledge, small businesses should not be affected. Ms. Jones also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules would be added flexibility for and protection of State of Texas Deferred Compensation Plan participants so that the plan complies with revised federal tax regulations and requirements.

Comments on the proposed rule amendments may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Jones at pjones@ers.state.tx.us. The deadline for receiving comments is April 18, 2005, at 10:00 a.m.

The amendments are proposed under Government Code, §609.508, which provides authorization for the ERS Board of Trustees to adopt rules necessary to administer the deferred compensation plan.

No other statutes are affected by these proposed amendments.

§87.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Account--A record that a prior plan vendor or revised plan vendor uses to record the value of the deferred compensation activity credited to the participant, including annual deferrals, earnings or investment losses, transfers and any distributions made to a participant

or on behalf of the participant's beneficiary [account for deferrals and investment income on a participant-by-participant basis].

(2) Agency coordinator--An employee of a state agency who has been designated by the agency to perform certain administrative functions with respect to the plan.

(3) Basic pension plan--The retirement program in which an employee must participate.

(4) Beneficiary--The designated person (or if none, the participant's estate) who is entitled to receive benefits under the plan after the death of a participant.

(5) [4] Beneficiary designation form--A form authorized and approved by the plan administrator to designate a participant's beneficiary.

(6) [5] Board of Trustees--The Board of Trustees of the Employees Retirement System of Texas.

(7) [6] Call-in day--The first five working days of the month.

(8) [7] Change agreement--A contract signed by a participant to request certain changes concerning the participant's deferrals, investment income, and participation in the plan.

(9) Code--The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.

(10) [8] Data collection center--A private entity used by the State Treasury Department to collect information from state depositories regarding deposits of state funds.

(11) [9] Day--A calendar day.

(12) [10] DCP--Deferred compensation plan.

(13) [11] Deferral--The amount of compensation a participant has agreed to defer under the plan.

(14) [12] Distribution agreement--A contract signed by a participant or beneficiary indicating the disposition of the participant's deferrals and investment income.

(15) [13] Disclosure form--A document completed by a prior plan vendor's representative and signed by the vendor representative disclosing the rate of return, fees, withdrawal penalties, and payout options for the qualified investment product selected.

(16) Eligible rollover distribution--Any distribution of all or any portion of a participant's account balance, including an individual retirement account described in §408(a) of the Code, an individual retirement annuity described in §408(b) of the Code, a qualified trust described in §401(a) of the Code, an annuity plan described in §403(a) or 403(b) of the Code, that accepts the rollover distribution, except that an eligible distribution does not include:

(A) any installment payment for a period of 10 years or more;

(B) any distribution as a result of an unforeseeable emergency; or

(C) for any other distribution, the portion, if any, of the distribution that is required under §401(a)(9).

(17) [14] Emergency withdrawal application--A form completed by a participant requesting the full or partial distribution of the participant's deferrals and investment income because of a unforeseeable emergency.

(18) ~~[(45)]~~ Employee--A person who provides services as an officer or employee to a state agency.

(19) ~~[(46)]~~ Executive director--The executive director of the Employees Retirement System of Texas.

(20) ~~[(47)]~~ FDIC--The Federal Deposit Insurance Corporation or its successor in function. The FDIC consists of two funds, the Savings Association Insurance Fund (SAIF), which insured savings associations and savings banks, and the Bank Insurance Fund (BIF), which insures commercial banks.

(21) ~~[(48)]~~ Fee--The term includes a fee, penalty, charge, assessment, market value adjustment, forfeiture, or service charge.

(22) ~~[(49)]~~ Gross income--The total of:

(A) the value of salary or wages;

(B) plus the value of longevity pay, hazardous duty pay, imputed income, special duty pay, sick, vacation, back pay and benefit replacement pay; and

(C) minus the present value of contributions to the Employees Retirement System, the Teacher Retirement System, the Optional Retirement Program, and the TexFlex program administered by the Employees Retirement System.

(23) ~~[(20)]~~ Home office--The primary location at which a prior plan vendor maintains its files and other records concerning the vendor's participation in the plan and the participants whose deferrals and investment income have been invested in the vendor's qualified investment products. The term is usually equivalent to the vendor's headquarters.

(24) ~~[(24)]~~ Inactive prior plan vendor--A prior plan vendor is an inactive prior plan vendor if no new deferrals have been invested in any of the vendor's qualified investment products for 12 consecutive months.

~~[(22) Includes--A term of enlargement and not of limitation or exclusive enumeration. The use of the term does not create a presumption that components not expressed are excluded.]~~

(25) ~~[(23)]~~ Includible compensation--An employee's actual wages in box 1 of Form W-2 for a year for services and compensation ~~[Compensation]~~ from a state agency that is includible in a participant's gross income under §401(a)(17) of the ~~[Internal Revenue]~~ Code and increased (up to the dollar maximum) by any compensation reduction election under §125, §132(f), §401(k), §403(b) or §457(b) of the Code ~~[of 1986 as amended, the Economic Growth and Tax Relief and Reconciliation Act of 2001 (referred to as "EGTRRA"); the Job Creation and Worker Assistance Act of 2002, and the final IRC §457 regulations.]~~

(26) ~~[(24)]~~ Investment income--The interest, capital gains, and other income earned through the investment of deferrals in qualified investment products.

(27) ~~[(25)]~~ Investment product--The term includes a life insurance product, fixed or variable rate annuity, stable value account, mutual fund, certificate of deposit, money market account, self-directed brokerage account, or passbook savings account. An investment product that is in any respect different from another investment product of the same vendor is a different investment product.

(28) ~~[(26)]~~ Investment provider--a prior plan vendor or revised plan vendor that offers an investment product in the plan.

(29) ~~[(27)]~~ NCUA--National Credit Union Administration, a United States Government Agency, which regulates, charters and insures deposits of the nation's federal credit unions. Shares and deposits in credit unions are insured by the NCUSIF as detailed in this section.

(30) ~~[(28)]~~ NCUSIF--National Credit Union Share Insurance Fund, is administered by the NCUA as detailed in this section and insures members' share and deposit accounts at federally insured credit unions.

(31) ~~[(29)]~~ Non-filer--A prior plan vendor which does not ensure that the plan administrator receives a quarterly report by the due date specified in §87.19(d)(1) of this title (relating to reporting and recordkeeping by prior plan vendors).

(32) ~~[(30)]~~ Non-spousal beneficiary--Any beneficiary other than a spouse or ex-spouse.

(33) Normal retirement age--A range of ages beginning with the earliest age at which a person is eligible to retire under the participant's basic pension plan as referenced in §87.5(g) of this title (relating to participation by employees).

(34) ~~[(34)]~~ One-time election form--A form completed by a participant requesting the full distribution of deferred compensation funds with a total balance that does not exceed the dollar limit under the ~~[Internal Revenue]~~ Code ~~[of 1986 as amended,]~~ §457(e)(9), ~~[and]~~ EGTRRA, or the dollar limit under §411(a)(11) of the Code, if greater, as of the date that payments commence ~~[as of the date of the election.]~~ Also known as the de minimis distribution election.

(35) ~~[(32)]~~ Participant--A current, retired, or former employee who either has elected to defer a portion of the employee's current compensation, previously deferred compensation or has a balance in the plan.

(36) ~~[(33)]~~ Participation agreement--A contract signed by an employee agreeing to defer the receipt of part of the employee's compensation in accordance with the plan and containing certain information regarding prior plan vendors, investment products, and other matters.

(37) ~~[(34)]~~ Plan--The deferred compensation program of the State of Texas that is governed by the ~~[Internal Revenue]~~ Code ~~[of 1986 as amended,]~~ §457 ~~[and EGTRRA,]~~ and authorized by Chapter 609, Government Code. This plan is a continuation of the plan previously administered by the Comptroller of Public Accounts.

(38) ~~[(35)]~~ Plan administrator--The Board of Trustees of the Employees Retirement System of Texas or its designee.

(39) ~~[(36)]~~ Prior plan--Refers to the State of Texas 457 Deferred Compensation Plan, the vendors and products approved by the Board of Trustees of the Employees Retirement System of Texas prior to September 1, 2000.

(40) ~~[(37)]~~ Prior plan vendor--A vendor in the prior plan with whom the plan administrator has signed a vendor contract. The term includes a prior plan vendor's officers and employees. The prior plan vendor may be an insurance company, bank, savings and loan, credit union, or mutual fund. The term applies only to vendors approved and implemented by the Board of Trustees before January 1, 2000.

(41) ~~[(38)]~~ Product approval notice--A written notice from the plan administrator to a prior plan vendor informing the vendor that a particular investment product has been approved for participation in the plan.

(42) [(39)] Product contract--A contract between an investment provider and the plan administrator concerning the participation of one of the vendor's investment products in the plan.

(43) [(40)] Product type--A categorization of an investment product according to its relevant characteristics. Examples of product types are life insurance products, mutual funds, certificates of deposit, savings accounts, share accounts, stable value account, self-directed brokerage account, and annuities.

(44) [(41)] Qualified investment product--An investment product concerning which the plan administrator and the sponsoring prior plan or revised plan vendor have signed a product contract.

(45) [(42)] Revised plan--Refers to the State of Texas 457 Deferred Compensation Plan and the vendors and products approved by the Board of Trustees of the Employees Retirement System of Texas after August 31, 2000 for the TexaSaver program. The term "TexaSaver program" is used as it is defined in Texas Government Code Section 609.502.

(46) [(43)] Revised plan vendor--An insurance company, brokerage firm, or mutual fund distributor that sells investment products in the revised plan. The term includes a vendor's officers and/or employees. This applies only to vendors approved and implemented by the Board of Trustees subsequent to December 31, 1999.

(47) [(44)] Separation from service--A termination of the employment relationship between a participant and the participant's employing state agency, as determined in accordance with the agency's established practice. The term excludes a paid or unpaid leave of absence.

(48) [(45)] Spousal beneficiary--The current or ex-spouse of a participant who is designated to receive a participant's account balance.

(49) [(46)] State agency--A board, commission, office, department, or agency in the executive, judicial, or legislative branch of state government. The term includes an institution of higher education as defined by the Education Code, §61.003, other than a public junior college.

(50) [(47)] Third Party Administrator (TPA)--An entity under the direction of the plan administrator [~~Plan Administrator~~] that operates independently of both the employer and investment providers to perform agreed upon administrative services to a tax-deferred defined contribution plan. These tasks may include recordkeeping, preparation of participant statements, monitoring deferral limits, and other specified services.

(51) [(48)] Transfer--The redemption of deferrals and investment income from a qualified investment product for investment in another qualified investment product.

(52) [(49)] Trust--The deferred compensation trust fund established to hold and invest deferrals and investment income under the plan for the exclusive benefit of participants and their beneficiaries.

(53) [(50)] Trustee--The Board of Trustees of the Employees Retirement System of Texas.

(54) Unforeseeable emergency distribution--A severe financial hardship of the participant resulting from: an illness or accident, loss of property due to casualty, funeral expenses or other extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

(55) Valuation date--A point in time in which an asset is assigned a dollar value. It may be the designated time of closing (daily, last day of the calendar month, the last day of the calendar quarter,

each December 31) for determination of account balances in a defined contribution plan.

(56) [(51)] Vendor contract--A contract between the plan administrator and an investment provider concerning the vendor's participation in the plan.

(57) [(52)] Vendor representative--An agent, independent agent, independent contractor, or other representative of a prior plan who is not an employee or officer of the vendor.

(58) [(53)] 401(a)(9), §401(a)(9) and Section 401(a)(9)--These terms refer to Internal Revenue Code §401(a)(9).

(59) [(54)] 457, §457 and Section 457--These terms refer to Internal Revenue Code §457.

§87.3. *Administrative and Miscellaneous Provisions.*

(a) Plan administrator.

(1) The plan administrator shall administer all aspects of the plan.

(2) The plan administrator shall:

(A) act for the state in all administrative matters concerning the plan;

(B) adopt and amend rules that are consistent with state and federal law;

(C) enter into necessary contracts; and

(D) take whatever action is necessary to ensure compliance with state and federal law and the sections in this chapter.

(b) Participation by state agencies in the plan.

(1) Commencing participation in the plan.

(A) A state agency may commence participation in the plan by:

(i) sending a written notice from its head of agency to the plan administrator; and

(ii) complying with the plan administrator's documentary, training, and other requirements for participation in the plan.

(B) The plan administrator may determine the effective date of a state agency's participation in the plan.

(C) If the plan administrator does not determine the effective date in accordance with subparagraph (B) of this paragraph, this subparagraph applies.

(i) If the plan administrator receives the written notice on the first day of a month, then the state agency's participation in the plan is effective on the first pay date of the following month.

(ii) Otherwise, the state agency's participation in the plan is effective on the first pay date of the second month following the month in which the plan administrator receives the notice.

(2) Terminating participation in the plan.

(A) Voluntary termination.

(i) A state agency may terminate its participation in the plan by sending a written notice from its head of agency to the plan administrator.

(ii) If the plan administrator receives the notice on the first day of a month, then the state agency's participation in the plan terminates on the first pay date of the third month following the month in which the plan administrator receives the notice. Otherwise, the state

agency's participation in the plan terminates on the first pay date of the fourth month following the month in which the plan administrator receives the notice.

(iii) A state agency's termination of its participation in the plan does not entitle the agency's participants to a distribution of their deferrals and investment income.

(iv) A participant who is employed by a state agency that has terminated its participation in the plan may not make additional deferrals until either the agency resumes participating in the plan or the participant becomes employed by a state agency participating in the plan.

(v) The agency coordinator of a state agency that has terminated its participation in the plan is not relieved from the responsibilities set forth in the sections in this chapter, except to the extent that the agency's participants will not be making additional deferrals to the plan.

(B) Involuntary termination or suspension.

(i) The plan administrator may terminate or suspend a state agency's participation in the plan if the agency or the agency's coordinator violates the sections in this chapter.

(ii) The plan administrator may determine the length of a suspension after considering all relevant circumstances.

(iii) The plan administrator may reinstate a state agency that has been terminated from participation in the plan if the plan administrator determines that the best interests of the plan would be served.

(iv) If the plan administrator terminates or suspends a state agency's participation in the plan, the agency's participants are not entitled to a distribution of their deferrals and investment income by virtue of the termination or suspension.

(v) The participant of a state agency that the plan administrator has terminated or suspended from participation in the plan may not make additional deferrals until the plan administrator reinstates the agency, the suspension ends, or the participant becomes employed by a state agency participating in the plan.

(vi) The agency administrator of a terminated or suspended state agency is not relieved from the responsibilities set forth in the sections in this chapter, except to the extent that the agency's participants will not be making additional deferrals to the plan.

(3) Agency coordinators. An agency coordinator's responsibilities may include:

(A) maintaining records concerning each participant as required by the plan administrator;

(B) keeping participation agreements on file;

(C) retaining the original copies of insurance policies and annuity contracts;

(D) ensuring that deferrals are properly deducted from a participant's salary and sent to the appropriate entity as directed by the plan administrator;

(E) monitoring the annual deferral limits for each plan participant to ensure the maximum annual deferral limit of the lesser of \$14,000 [~~\$13,000~~] (as adjusted) or 100% of the participant's gross income is not exceeded;

(F) calculating and monitoring catch-up limits and furnishing the plan administrator with the applicable catch-up forms;

(G) ensuring that all forms and other paperwork are properly completed and forwarded to the appropriate party;

(H) balancing participant records and reconciling those records with the data provided by the prior plan vendors and the plan administrator;

(I) informing employees and participants about the plan, including the necessity to file distribution agreements in accordance with §87.17 of this title (relating to Distributions);

(J) acting as a buffer between employees and participants on the one hand and prior plan vendors on the other, although an agency coordinator is prohibited from providing investment advice;

(K) attempting to locate missing participants and beneficiaries in accordance with §87.17(q) of this title;

(L) assisting a participant who has retired or left state employment if the participant's last position in state government was with that particular agency that employs the agency coordinator;

(M) continuing to assist a participant with all deferred compensation matters if a participant transfers from a participating state agency to a non-participating state agency until the participant returns to a different participating agency;

(N) assisting the beneficiary of a participant whose last position in state government was with that particular state agency that employs the agency coordinator;

(O) notifying the plan administrator when a participant dies or separates from service; and

(P) performing any other duties specified in the sections in this chapter.

(c) Miscellaneous provisions.

(1) The participation in the plan of an investment provider or TPA, qualified investment product, state employee, vendor representative, or employee of a prior or revised plan vendor is subject to changes in federal law, federal regulations, state law, and the sections in this chapter.

(2) The fiscal year of the plan begins on January 1 of each year.

(3) The mailing address of the plan administrator is: Plan Administrator, Deferred Compensation \$457 Plan, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207.

(4) If a provision in the sections in this chapter conflicts with a federal law, rule, or regulation governing the plan, then the law, rule, or regulation prevails over the provision.

(5) The participation of an employee in the plan does not give the employee a legal or equitable right against the participant's employing state agency, the plan administrator, or the State of Texas except as provided in the sections in this chapter. The plan does not affect the terms of employment between a participant and the participant's employing state agency.

(6) If a time limit is expressed in terms of a number of days and the last day of the time limit falls on a weekend or holiday recognized by the State of Texas for observance by state employees, the last day of the time period is the first business day after the weekend or holiday.

(7) The sections in this chapter prevail over any document used in the administration of the plan that has provisions or requirements which conflict with the sections.

(8) The interests of each participant or beneficiary under the plan are not subject to the claims of the participant's or beneficiary's creditors; and neither the participant nor any beneficiary shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the plan, which payments and interest are expressly declared to be non-assignable and non-transferable. This rule is applicable as referenced in §87.17(e)(7) of this title (relating to distributions by employees) for qualified domestic relations orders.

§87.5. Participation by Employees.

(a) Benefits of participation. The plan administrator shall cease to accept deferrals to investment products approved under the prior plan, with exception of life insurance products on or after September 1, 2000. Subject to any changes in federal law:

(1) a participant's deferrals are not subject to federal income taxation until the deferrals are paid or otherwise made available to the participant; and

(2) investment income is not subject to federal income taxation until it is paid or otherwise made available to the participant.

(b) Enrollment of participants in the plan.

(1) An employee may complete a participation agreement, enroll online or enroll through customer service representative at the TPA in the revised plan.

(2) If a participant has not selected an investment product to receive deferrals, the deferrals shall be invested in a product selected by the plan administrator at its sole discretion.

(c) Effective date of enrollment. A participant's enrollment in the Plan is effective for compensation earned beginning with the month following the month in which the participant enrolls.

(d) Eligibility. Employees are eligible to participate in the plan and defer compensation immediately upon becoming employed by a state agency.

(e) [(d)] Contents of a participation agreement used in the prior plan. A participation agreement must contain but shall not be limited to:

(1) the participant's consent for payroll deductions equal to the amount of deferrals during each pay period;

(2) the amount that will be deducted from the participant's compensation during each pay period;

(3) the prior plan vendor and qualified investment product in which the participant's deferrals will be invested;

(4) the date on which the payroll deductions will begin or end, as appropriate;

(5) the signature of an individual with authority to bind the prior plan vendor;

(6) the signature of an individual with authority to bind the participant; and

(7) an incorporation by reference of the requirements of state law and the sections in this chapter.

(f) [(e)] Participants with existing life insurance products.

(1) This paragraph is effective until December 31, 1998. When a participant has deferrals and investment income in a life insurance product, the State of Texas:

(A) retains all of the incidents of ownership of the life insurance product;

(B) is the sole beneficiary of the life insurance product;

(C) is not required to transfer the life insurance product to the participant or the participant's beneficiary; and

(D) is not required to pass through the proceeds of the product to the participant or the participant's beneficiary.

(2) This paragraph is effective January 1, 1999, and thereafter. When a participant has deferrals and investment income in a life insurance product, the life insurance product shall be held in trust for the exclusive benefit of the participant and beneficiaries.

(g) [(f)] Normal maximum amount of deferrals.

(1) The amount a participant defers during each tax year may not exceed the normal maximum amount of deferrals.

(2) The normal maximum amount of deferrals is equal to the lesser of \$14,000 [~~\$13,000~~] (as periodically adjusted for cost-of-living in accordance with [Internal Revenue] Code §457(e)(15)), §415(d), [EGTRRA] and the Job Creation and Worker Assistance Act of 2002, or 100% of a participant's includible compensation.

(3) The participant's employing agency will monitor the annual deferral limits for each plan participant to ensure the maximum annual deferral limit of the lesser of \$14,000 [~~\$13,000~~] (as adjusted) or 100% of a participant's gross income is not exceeded. Each participant enrolling in the plan must provide the employing state agency any information necessary to ensure compliance with plan requirements, including, without limitation, whether the employee is a participant in any other eligible plan. If a participant makes deferrals in excess of the normal maximum annual deferral limit and is not participating under the catch-up provision, the following actions will be taken.

(A) Upon notification by the participant's agency, the prior plan vendor or TPA will return to the participant's agency the amount of deferrals in excess of the normal plan limits, that is, the lesser of \$14,000 [~~\$13,000~~] (as adjusted) or 100% of the participant's gross income without any reduction for fees or other charges.

(B) Upon receipt of the funds, the participant's agency will reimburse the participant through its payroll system.

(4) If any deferral (or any portion of a deferral) is made to the plan by a good faith mistake of fact, then within one year after the payment of the deferral, and upon receipt in good order of a proper request approved by the plan administrator, the amount of the mistaken deferral (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the participant or, to the extent required or permitted by the plan administrator, to the participant's employing state agency.

(5) Disregard excess deferral. A participant is treated as not having deferred compensation under a plan for a prior taxable year to the extent excess deferrals under the plan are distributed, as described in (g)(4). To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as an excess deferral for those prior years.

(h) [(g)] Three-year catch-up exception to the normal maximum amount of deferrals.

(1) This subsection provides a limited exception to the normal maximum amount of deferrals.

(2) In the event that a participant chooses to begin the three-year catch-up option, the participant is required to complete and provide the plan administrator with a copy of the three-year catch-up provision agreement form.

(3) In this subsection, the term "normal retirement age" for any participant means a range of ages:

(A) beginning with the earliest age at which a person may retire under the participant's basic pension plan:

(i) without an actuarial or similar reduction in retirement benefits; and

(ii) without the state's consent for the retirement; and

(B) ending at age 70.5.

(C) A participant who is a police officer or firefighter (defined in [Internal Revenue] Code §415(b)), may designate a normal retirement age that is earlier than that described above, but in any event may not be earlier than age 40.

(4) If a participant works beyond age 70.5, the normal retirement age for the participant is the age designated by the participant, which, in this instance, may not be later than the participant's separation from service.

(5) For any or all of the last three full taxable years ending before the taxable year in which a participant attains normal retirement age, the maximum amount that the participant may defer for each tax year is the lesser of:

(A) twice the annual 457(g) deferral limit as adjusted, or

(B) the sum of: ~~[the normal maximum amount of deferrals that the participant did not use in prior tax years commencing January 1, 1979, provided the participant was eligible to participate in the plan during those years.]~~

(i) the normal maximum amount of deferrals for the current year plus each prior calendar year beginning after December 31, 2001, during which the participant was an employee under the plan, minus the aggregate amount of compensation that the participant deferred under the plan during such years, plus

(ii) the normal maximum amount of deferrals that the participant did not use in prior tax years commencing December 31, 1978 and before January 1, 2002, provided the participant was eligible to participate in the plan, minus the aggregate contributions to pre-2002 coordination plans during those years.

(6) The participant's employing agency will calculate and monitor all three-year catch-up limits and furnish the plan administrator with the applicable three-year catch-up forms. If a participant makes deferrals in excess of the participant's three-year catch-up limit, the following actions will be taken.

(A) Upon notification by the participant's agency, the prior plan vendor or TPA will return to the participant's agency, the amount of deferrals in excess of the three-year catch-up limit without any reduction for fees or other charges.

(B) Upon receipt of the funds, the participant's agency will reimburse the participant through its payroll system.

(7) This subsection applies only if the participant has not previously used the three-year catch-up exception with respect to a different normal retirement age under the plan or another deferred compensation plan governed by the [Internal Revenue] Code [of 1986 as amended,] §457 [and EGTRRA].

(8) If a participant makes deferrals in excess of the normal plan limits under the three-year catch-up provision during or after the

calendar year in which the participant reaches normal retirement age, the following actions will be taken.

(A) Upon notification by the participant's state agency, the prior plan vendor or TPA will return to the participant's state agency, the amount of deferrals in excess of the normal plan limits, that is, the lesser of \$14,000 [~~\$13,000~~] (as adjusted in accordance with [Internal Revenue] Code §457(e)(15) or 100% of a participant's includible compensation) without any reduction for fees or other charges.

(B) Upon receipt of the funds, the participant's state agency will reimburse the participant through its payroll system.

(9) Over age 50 catch-up. A participant age 50 or older during any calendar year shall be eligible to make additional pre-tax contributions in accordance with [Internal Revenue] Code §414(v) applicable to 457 plans, in excess of normal deferral amounts. A participant may make an additional contribution over and above the applicable deferral limit. The additional contribution is \$4,000 [~~\$3,000~~] for 2005 [2004], increasing by \$1,000 each year up to \$5,000 in 2006. After 2006, the amount of the "Over age 50 and over catch-up" will be indexed in \$500 increments based upon cost-of-living adjustments. A participant who elects to defer contributions under the normal three-year catch-up provisions may not also defer under the special Over age 50 catch-up and Code §414(v) and §457.

(i) ~~[(h)]~~ Changes before a participant becomes entitled to a distribution.

(1) A participant may change the amount of deferral at any time.

(2) A participant must execute a change agreement for the prior 457 Plan funds and file the agreement with the participant's agency coordinator when the participant:

(A) initiates a transfer;

(B) changes the participant's primary or secondary beneficiary, or both; or

(C) performs a combination of the items specified in subparagraphs (A) or (B) of this paragraph.

(3) Upon receipt of a participation agreement or change agreement, an agency coordinator shall review the agreement to determine whether it complies with the sections in this chapter.

(A) With a participant's enrollment, the agency coordinator shall take the action necessary for payroll initiation.

(B) If a change agreement complies, the agency coordinator shall send the agreement to the plan administrator.

(4) This paragraph applies to changes of beneficiaries, changes of the prior plan vendor or qualified investment product that receives a participant's deferrals, and changes to the amount a participant defers per pay period. An executed change agreement or participation agreement is effective beginning with the month following the month in which the agency coordinator receives the agreement from the participant.

(5) This paragraph applies to transfers. An executed change agreement is effective on the date that the transfer procedures specified in §87.15 of this title (relating to Transfers) have been completed.

(i) ~~[(i)]~~ Conflict in beneficiary designations. The designation of a primary or secondary beneficiary, or both, in a beneficiary designation form, participation agreement, change agreement, or distribution

agreement prevails over a conflicting designation in any other document.

(k) ~~[(j)]~~ A beneficiary designation that names a former spouse is invalid unless the designation is completed after the date of divorce and received by the plan administrator.

(l) ~~[(k)]~~ Paid leave of absence. Deferrals may continue during a participant's paid leave of absence, to the extent that compensation continues.

(m) ~~[(l)]~~ Unpaid leave of absence. If a participant ~~[Participant]~~ separates from service or takes a leave of absence from the state ~~[State]~~ because of service in the military and does not receive a distribution of his or her ~~[his/her]~~ account balances, the Plans will allow suspension of loan repayments until after the conclusion of the period of military service. Participants on a leave of absence due to qualified military service under Code §414(u) may elect to make additional annual deferrals upon resumption of employment with the state equal to the maximum annual deferrals that the participant could have elected during that period if employment had continued (at the same level of compensation) without the interruption or leave, reduced by the annual deferrals, if any. This right applies for five years following the resumption of employment (or if sooner, for a period equal to three times the period of the interruption or leave).

(n) Disability. A disabled participant may elect to defer compensation during any portion of the period of his or her disability to the extent that he or she has actual compensation (not imputed compensation and not disability benefits) from which to make contributions to the plan and has not had a separation from employment.

(o) ~~[(m)]~~ Termination and resumption of deferrals.

(1) An employee may voluntarily terminate additional deferrals to the prior plan by completing a participation agreement or by contacting his or her agency coordinator.

(2) An employee who returns to active service after a separation from service must enroll in the revised plan before deferrals may resume.

(p) ~~[(n)]~~ Ownership of deferrals and investment income.

(1) Until December 31, 1998, a participant's deferrals and investment income are the property of the State of Texas until the deferrals and investment income are actually distributed to the employee.

(2) Effective January 1, 1999, in accordance with Chapter 609, Texas Government Code and ~~[Internal Revenue]~~ Code §457(g), all amounts currently and hereafter held under the plan, including deferrals and investment income, shall be held in trust by the Board of Trustees for the exclusive benefit of participants and their beneficiaries and may not be used for or diverted to any other purpose, except to defray the reasonable expenses of administering the plan. In its sole discretion, the Board of Trustees may cause plan assets to be held in one or more custodial accounts or annuity contracts that meet the requirements of ~~[Internal Revenue]~~ Code §457(g), and §401(f) ~~[and EGTRRA]~~. In addition, effective January 1, 1999, the Board of Trustees does hereby irrevocably renounce, on behalf of the State of Texas and participating state agencies, any claim or right which it may have retained to use amounts held under the plan for its own benefit or for the benefit of its creditors and does hereby irrevocably transfer and assign all plan assets under its control to the Board of Trustees in its capacity as the trustee of the trust created hereunder. It shall be impossible, prior to the satisfaction of all liabilities with respect to participants and their beneficiaries, for any part of the assets and income of the trust fund to be used for, or diverted to, purposes other than for the exclusive benefit of participants and their beneficiaries. Adoption of this rule shall constitute notice to

prior plan vendors holding assets under the plan to change their records effective January 1, 1999, to reflect that assets are held in trust by the Board of Trustees for the exclusive benefit of the participants and beneficiaries. Failure of a vendor to change its records on a timely basis may result in the expulsion of the vendor from the plan.

(q) ~~[(o)]~~ Market risk and related matters.

(1) The plan administrator, the trustee, an employing state agency, or an employee of the preceding are not liable to a participant if all or part of the participant's deferrals and investment income are diminished in value or lost because of:

(A) market conditions;

(B) the failure, insolvency, or bankruptcy of an investment provider; or

(C) the plan administrator's initiation of a transfer or investment of deferrals in accordance with the sections in this chapter.

(2) A participant is solely responsible for monitoring his or her own investments and being knowledgeable about:

(A) the financial status and stability of the investment provider in which the participant's deferrals and investment income are invested;

(B) market conditions;

(C) the resulting cost of making a transfer or distribution from a qualified investment product;

(D) the amount of the participant's deferrals and investment income that are invested in an investment provider's qualified investment products;

(E) the riskiness of a qualified investment product; and

(F) the federal tax advantages and consequences of participating in the plan and receiving distributions of deferrals and investment income.

(r) ~~[(p)]~~ Alienation of deferrals and investment income. A participant's deferrals and investment income may not be:

(1) assigned or conveyed;

(2) pledged as collateral or other security for a loan;

(3) attached, garnished, or subjected to execution; or

(4) conveyed by operation of law in the event of the participant's bankruptcy, or insolvency.

§87.9. Investment Products.

(a) Prohibited activity. A prior plan vendor or prior plan vendor representative may not solicit investments in an investment product after August 31, 2000.

(b) New qualified investment products.

(1) Notwithstanding anything to the contrary in the sections in this chapter, other than §87.31 and paragraph (2) of this subsection, the plan administrator may not:

(A) approve an investment product as a qualified investment product; or

(B) issue a product approval notice.

(2) Paragraph (1) (A) and (B) of this subsection do not apply to a qualified investment product that the plan administrator approved for participation in the plan before May 7, 1990. If the plan administrator has not executed a product contract with a prior plan vendor

that is sponsoring a qualified investment product, the plan administrator and the prior plan vendor shall execute a product contract no later than the 90th day after May 7, 1990. If a product contract is not executed, the plan administrator shall terminate the qualified investment product's participation in the plan.

(c) Eligibility of investment products. The investment products that are eligible for approval as qualified investment products are:

- (1) fixed and variable rate annuities;
- (2) life insurance (except that new life policies may not be offered in the plan by any vendor after December 31, 1992);
- (3) stable value account;
- (4) self-directed brokerage account;
- (5) mutual funds; and
- (6) money market accounts, certificates of deposit, share certificates or passbook savings accounts offered by a bank, savings and loan association, or credit union.

(d) Review of investment products.

(1) General requirements. The plan administrator may not issue a product approval notice concerning an investment product unless:

(A) the prior plan vendor offering the investment product submits to the plan administrator the documentation and information the plan administrator requires;

(B) the prior plan vendor offering the product agrees to accept both transfers to and the investment of deferrals in its product;

(C) the plan administrator finds that the advertising material for the product, if any, complies with the sections in this chapter;

(D) the plan administrator determines that the disclosure form for the product complies with the sections in this chapter;

(E) the plan administrator finds that the investment product has a guaranteed minimum interest rate if the product has a variable interest rate;

(F) the plan administrator determines that the investment product complies with §87.7(b)(5) of this title (relating to prior plan vendor participation), if the product is a mutual fund;

(G) the plan administrator concludes that the inclusion of the investment product in the plan would be in the best interests of the plan; and

(H) the plan administrator ascertains that the vendor has obtained the necessary approvals from the appropriate regulatory agencies.

(2) Additional requirements for approving investment products offered by insurance companies. Before the plan administrator may sign a product contract, the plan administrator must:

(A) obtain written confirmation from the Texas Department of Insurance that the investment product has been approved for sale in Texas;

(B) determine that the amount of the investment product's premiums, payments, and benefits are not calculated with regard to the sex of the person insured or of the recipient of the benefits; and

(C) determine that the investment product does not insure anyone other than a participant.

(e) Product contracts.

(1) The plan administrator may not sign a product contract with a prior plan vendor unless the plan administrator has already issued a product approval notice concerning the investment product that will be covered by the product contract.

(2) The plan administrator may not sign a product contract that does not comply with the sections in this chapter and applicable law.

(3) The plan administrator may, in its sole discretion, permit a prior plan vendor to replace, substitute, or merge an existing plan product with another product, if procedures established by the plan administrator are met.

(f) Withdrawal of a qualified investment product from the plan.

(1) A prior plan vendor may withdraw a qualified investment product from the plan after notifying, in writing, the plan administrator and all participants whose deferrals and investment income are invested in the qualified investment product. The prior plan vendor must ensure that the plan administrator and the participants receive the written notice no later than the 60th day before the effective date of the withdrawal.

(2) A prior plan vendor may establish the effective date of a withdrawal of the vendor's qualified investment product. The prior plan vendor must clearly state the effective date in the written notice required by paragraph (1) of this subsection.

(3) Notwithstanding paragraph (2) of this subsection, if a qualified investment product has a specific term, such as a three-year certificate of deposit or a 30-day passbook account, the effective date of the withdrawal may not be before the term of the product has expired for every participant unless approved by the plan administrator, the prior plan vendor must hold the participants, the plan and plan administrator harmless from any fees or penalties that may be applicable in connection with such premature termination or withdrawal. The term of a product will be deemed expired if all participants have transferred their funds to another qualified investment product.

(4) After receiving notice of withdrawal, the plan administrator shall contact each affected participant to submit a prior funds transfer form for the disposition of his or her ~~their~~ deferrals and investment income. For each participant from whom the plan administrator has not received a prior funds transfer form by the effective date of the withdrawal, the plan administrator shall initiate a transfer of all deferrals and investment income from the qualified investment product being withdrawn to the default fund in the revised plan.

(5) When a prior plan vendor withdraws a qualified investment product from the plan, the vendor may not charge a fee or permit to be charged or penalty to participants, the plan or plan administrator for transfers made after the notice of withdrawal.

(6) When a prior plan vendor that is an insurance company with existing life policies in the plan withdraws a life insurance product from the plan, this paragraph applies in addition to the preceding paragraphs of this subsection.

(A) In this paragraph, the term "withdrawn life insurance product" means a life insurance product that is no longer a qualified investment product because the life insurance company offering the product has withdrawn the product from the plan.

(B) A participant whose deferrals and investment income have been invested in a withdrawn life insurance product may continue life insurance coverage with the insurance company offering the product.

(C) If the insurance company has a life insurance product remaining in the plan that is comparable to the withdrawn life insurance product, this paragraph applies. The insurance company shall offer continuing coverage in:

(i) a qualified investment product that is comparable to the withdrawn life insurance product; and

(ii) a life insurance product that is not a qualified investment product but is comparable to the withdrawn life insurance product.

(D) If the insurance company does not have a life insurance product remaining in the plan that is comparable to the withdrawn life insurance product, this paragraph applies. The company must offer continuing life insurance coverage to each participant whose deferrals and investment income were invested in the withdrawn life insurance product. The insurance company shall offer continuing coverage in a life insurance product that is comparable to the withdrawn life insurance product.

(E) If a participant continues life insurance coverage in a life insurance product that is not a qualified investment product, the participant must pay the premiums for the coverage directly to the insurance company. The premiums may not be paid with deferrals or investment income.

(F) A participant may exercise the participant's right to continue life insurance coverage only if the participant mails to the insurance company written notice of intention to continue the coverage. The written notice must be postmarked no later than the 60th day after the effective date of the withdrawal of the life insurance product from the plan. However, an insurance company may increase the 60-day time limit for a participant or for all participants.

(G) When a participant elects to continue life insurance coverage, the insurance company with which the coverage is continuing may not:

- (i) refuse to continue the life insurance;
- (ii) require a postponement or an interruption in coverage for any length of time;
- (iii) require the participant to provide evidence of insurability;
- (iv) require the participant to apply for coverage;
- (v) require the participant to select a different life insurance product from the withdrawn life insurance product;
- (vi) discriminate in any manner against the participant because of the company's withdrawal of the product;
- (vii) treat the participant differently than the company would treat a non-participant with the same life insurance coverage; or
- (viii) increase the premiums charged to the participant solely because the company withdrew a life insurance product from the plan or because the participant elected to continue coverage.

(H) A prior plan vendor must inform the participant in the written notice required by paragraph (1) of this subsection that the participant has the rights specified in this paragraph.

(I) If a prior plan vendor does not comply with subparagraph (H) of this paragraph, then a participant may exercise the participant's right to continue insurance up to the 120th day after the prior plan vendor actually mails written notice to the participant containing a full explanation of the participant's rights.

§87.15. Transfers.

(a) Transfers initiated by participants. A participant may initiate a transfer of all or part of the participant's deferrals and investment income at any time. The number of transfers that a participant may initiate per year is unlimited.

(b) Transfers initiated by the plan administrator.

(1) Generally.

(A) The plan administrator may initiate a transfer of all or part of a participant's deferrals and investment income if the plan administrator determines that the transfer would be in the best interests of the plan or the participant.

(B) Without limiting the plan administrator's authority to initiate a transfer as specified elsewhere in the sections in this chapter, the plan administrator may initiate a transfer of all deferrals and investment income that are invested in:

(i) the qualified investment products of inactive prior plan vendors;

(ii) the qualified investment products of prior plan vendors whose participation in the plan has terminated; and

(iii) qualified investment products whose participation in the plan has terminated.

(2) Transfers from credit unions.

(A) The plan administrator shall initiate a transfer of a participant's deferrals and investment income from a credit union's qualified investment product in accordance with §87.7(k)(7) of this title (relating to prior plan vendor participation).

(B) The authority to initiate a transfer under this paragraph is in addition to the authority under paragraph (1) of this subsection.

(c) Value of amounts involved in a transfer initiated by the plan administrator.

(1) This subsection applies only when the plan administrator initiates a transfer from a qualified investment product because the prior plan vendor sponsoring the product:

(A) has become an inactive prior plan vendor; or

(B) has violated a section in this chapter.

(2) The prior plan vendor who offers the qualified investment product from which the transfer is being made may not charge or permit to be charged a fee or penalty to participants, the plan or plan administrator.

(3) The amount involved in a transfer must be equal to the total amount of deferrals and investment income that were invested in the qualified investment product as of the date on which the plan administrator initiates the transfer.

(4) Notwithstanding paragraph (3) of this subsection:

(A) an insurance company may deduct from the amount involved in a transfer the actual cost of insuring the participant whose deferrals and investment income are being moved. The period of insurance coverage that may be considered while calculating the actual cost of insuring the participant:

(i) starts on the day on which the deferrals and investment income were invested in the product; and

(ii) ends on the day on which the plan administrator initiates the transfer; and

(B) the amount involved in a transfer from a mutual fund must be equal to the current market value of the deferrals and investment income as defined in §87.19(a)(2) of this title (relating to reporting and recordkeeping by prior plan vendors) without considering the deduction of any fees.

(5) This subsection prevails over a conflicting provision in a vendor contract, product contract, disclosure agreement, or any other document.

(d) Procedures for making a transfer of all deferrals and investment income from a qualified investment product.

(1) This subsection applies when the plan administrator initiates a transfer of all deferrals and investment income of every participant from a qualified investment product.

(2) The plan administrator shall send a written notice to the prior plan vendor who is sponsoring the qualified investment product. The notice must require the prior plan vendor to:

(A) immediately issue a check or cause a wire-transfer to be made in a lump-sum amount equal to the deferrals and investment income being moved or the plan administrator may choose:

(i) to not immediately exercise the requirement of paragraph (2)(A) of this subsection if it is in the best interest of participants; or

(ii) to request the vendor to issue separate checks or cause separate wire transfers in behalf of each affected participant; and

(B) promptly send a list to the plan administrator containing:

(i) the name of each participant whose deferrals and investment income were moved;

(ii) the amount of the deferrals and investment income that was moved, on a participant-by-participant basis;

(iii) the social security number of each affected participant;

(iv) the name of the employing state agency of each affected participant;

(v) date of birth;

(vi) participant's address; and

(vii) distribution status and frequency.

(3) If a check is used to make a plan-to-plan transfer in the prior or revised plan, this paragraph applies.

(A) The plan administrator, in its discretion, may direct the prior plan vendor to make the check payable to the payee specified by the plan administrator, which may be the revised plan or an eligible plan in the case of a plan-to-plan transfer. An eligible post-severance plan-to-plan transfer may include a transfer to another eligible governmental plan. If the plan administrator directs the prior plan vendor to send funds directly to the revised plan, the plan administrator shall provide instructions concerning the investment of the amounts transferred. The plan administrator or TPA may require such documentation is as satisfactory to the plan administrator or TPA, as either deems necessary, to effectuate the transfer in accordance with §457(e)(10) of the Code and §1.457-10(b) of the Income Tax Regulations. The TPA or plan administrator shall confirm that the other plan is an eligible governmental defined benefit plan as defined in §1.457-2(f) of the Income Tax Regulations. If the specified payee is another prior plan vendor, the prior plan vendor shall promptly deposit the check into the applicable account previously agreed upon. The prior plan vendor shall use its

best efforts to ensure that the plan administrator or the specified payee receives the check no later than the 15th day after the prior plan vendor receives notification of the transfer. The amount so transferred shall be credited to the participant's account balance and shall be held, accounted for, administered and otherwise treated in the same manner as a deferral by the participant under the plan, except that the transferred amount shall not be considered an annual deferral under the plan in determining the maximum deferral.

(B) If the check is sent to the plan administrator, the plan administrator must endorse the check and deposit the check with the TPA selected by the plan administrator.

(C) Upon receiving verification of a completed transfer from the qualified vendor selected by the plan administrator, and receiving a list of affected participants from the prior plan vendor, the plan administrator shall notify each affected participant concerning the transfers.

(4) If a wire-transfer is used to make a transfer, this paragraph applies.

(A) The prior plan vendor must ensure that the TPA selected by the plan administrator to hold these funds receives the wire-transfer within 48 hours.

(B) The TPA selected by the plan administrator shall promptly deposit the wire-transfer into the applicable account previously agreed upon, and notify the plan administrator concerning the deposit.

(C) The receiving TPA or prior plan vendor shall acknowledge receipt of the deferrals and investment income in the manner required by the plan administrator.

(D) Upon approval of the plan administrator, the prior plan vendor transferring funds may cause a wire transfer to be made in lieu of issuing a check:

(i) if the prior plan vendor sending funds complies with procedures specified by the plan administrator;

(ii) the prior plan vendor receiving funds is approved by the plan administrator to accept a wire transfer of funds; and

(iii) the prior plan vendor receiving funds complies with procedures specified by the plan administrator.

(5) If a participant initiates a transfer, this paragraph applies.

(A) A participant may initiate a transfer of the participant's deferrals and investment income through the execution of a prior funds transfer form in accordance with §87.5(h) of this title (relating to Participation by Employees).

(B) After receiving a completed Prior Funds Transfer form, the plan administrator shall notify the TPA.

(C) The plan administrator, in its discretion, may direct the prior plan vendor to make the check payable to the payee specified by the plan administrator, which may be the TPA or an eligible plan in the case of a plan-to-plan transfer. An eligible plan-to-plan post-severance transfer may include a transfer to another eligible governmental plan. If the plan administrator directs the prior plan vendor to send funds directly to the TPA, the plan administrator shall provide instructions concerning the investment of the amounts transferred. If the specified payee is the TPA, they shall promptly deposit the check into the applicable account previously agreed upon. The prior plan vendor shall use its best efforts to ensure that the plan administrator or the specified

payee receives the check no later than the 15th day after the prior plan vendor receives notification of the transfer.

(D) If the check is sent to the plan administrator, the plan administrator shall:

(i) endorse the check in favor of the TPA that will be receiving the transfer; and

(ii) mail to the TPA that will be receiving the transfer the endorsed check and written instructions concerning the investment of the amounts transferred.

(E) The TPA must send written confirmation to the plan administrator concerning the TPA's receipt of the transferred funds and written instructions. The TPA must ensure that the plan administrator receives the written confirmation no later than the 15th day after the TPA receives the transferred funds and instructions.

(F) Upon approval of the plan administrator, the vendor transferring funds may cause a wire transfer to be made in lieu of issuing a check:

(i) if the prior plan vendor sending funds complies with procedures specified by the plan administrator;

(ii) the prior plan vendor receiving funds is approved by the plan administrator to accept a wire transfer of funds; and

(iii) the prior plan vendor receiving funds complies with procedures specified by the plan administrator.

(e) Resolving transfer-related problems. A prior plan vendor shall use its best efforts, exercise good faith and reasonable diligence in resolving all transfer-related administrative problems with the plan administrator or participant within a reasonable length of time, not to exceed 30 days, after receiving a transfer notification. The plan administrator may not complete any forms provided by a prior plan vendor in connection with a transfer.

(f) Transfers into life insurance products.

(1) The only transfer allowed into a life product is a transfer from an existing life insurance product to a life insurance product approved by the plan administrator.

(2) This paragraph is effective until December 31, 1998. When a participant chooses to transfer deferrals and investment income to an existing replacement life insurance product within the same prior plan vendor, the State of Texas:

(A) retains all of the incidents of ownership of the life insurance product;

(B) is the sole beneficiary of the life insurance product;

(C) is not required to transfer the life insurance product to the participant or the participant's beneficiary; and

(D) is not required to pass through the proceeds of the product to the participant or the participant's beneficiary.

(3) This paragraph is effective January 1, 1999, and thereafter. When a participant chooses to transfer deferrals and investment income to a life insurance product within the same prior plan vendor, the life insurance product shall be held in trust for the exclusive benefit of the participant and beneficiaries.

(g) Telephone transfers.

(1) A prior plan vendor may apply for approval to offer to participants the capability of making transfers of plan deferrals and investment earnings currently on account with that prior plan vendor from one qualified investment product or products to another qualified

investment product or products within that prior plan vendor via telephone instructions given by the participant or plan administrator.

(2) When a participant is in distribution, the telephone transfer option may be used; however, it must be used in accordance with §87.17(i)(6)(C) of this title (relating to Transfers).

(3) The prior plan vendor and the participant must obtain approval from the plan administrator and must follow all instructions and procedures prescribed by the plan administrator.

§87.17. Distributions.

(a) In general. Upon request, the plan administrator shall authorize the distribution of a participant's deferrals and investment income in accordance with the applicable distribution agreement so long as:

(1) the participant has attained age 70.5;

(2) the participant has died;

(3) the participant's employment with the State of Texas has terminated other than through death; [or]

(4) the participant has complied with subsection (l) of this section relating to the one-time election of distribution that does not exceed the dollar limit under [Internal Revenue] Code [of 1986 as amended,] §457(e)(9) [and EGTRRA];

(5) the participant elects to have any portion of his or her account balance transferred to a tax-qualified governmental defined benefit plan (as defined in §414(d) of the Code) in the same state or another state that provides for the acceptance of plan-to-plan transfers with respect to the participant; or

(6) the participant elects a transfer to be made if the transfer is either for the purchase of permissible service credit (as defined in §415(n)(3)(A) of the Code) under the receiving governmental defined benefit plan, or if the transfer is for a repayment to which §415 of the Code does not apply by reason of §415(k)(3) of the Code.

(b) Definitions.

(1) In subsections (m)-(o) of this section, the term "participant's deferrals and investment income" means the cash value of the participant's deferrals and investment income after considering all surrender charges, costs of insurance, forfeitures, and other similar charges.

(2) In this section, a beneficiary or secondary beneficiary "survives" another person only if the beneficiary or secondary beneficiary is alive on the day after the person's death.

(c) Content of a distribution agreement.

(1) A distribution agreement must contain but shall not be limited to:

(A) identifying information concerning the participant, including the date of birth and social security number of the participant;

(B) the name of the prior plan vendor or revised plan vendor covered by the agreement;

(C) the type of qualified investment product from which distributions will be made, including policy/certificate/or account number;

(D) the date on which the participant separated from service, attained age 70.5, or died, whichever is applicable;

(E) the beginning date of the distributions;

(F) the type [frequency] of distribution;

(G) the amount to be distributed during each time period or the method for calculating the amount to be distributed during each time period; and

(H) beneficiary information, including date of birth(s) and social security number(s).

(2) The person filing the distribution agreement must attach a properly executed Form W-4P to the agreement.

(3) A distribution agreement must be consistent with the distribution options available for the qualified investment product covered by the agreement. The prior plan vendor agent/representative signature on the distribution agreement signifies that the distribution option is available and can be implemented as requested.

(d) Commencement of distributions. Notwithstanding anything in a distribution agreement:

(1) the earliest a participant or beneficiary may begin receiving a distribution is the 51st day after the occurrence that entitles the participant or beneficiary to the distribution, except this paragraph does not apply to a lump sum, an emergency withdrawal or a one-time election distribution;

(2) if the participant's age is less than age 70, the distribution period is 27.4 years plus the number of years that the participant's age is less than age 70, and can be made in monthly, quarterly or annual installments based on the account balance as of the end of the year prior to the year for which the distribution is being calculated; and

[(2) the latest a participant may begin receiving a distribution is April 1st of the calendar year following the calendar year in which the former employee attains age 70.5.]

(3) A participant must begin receiving a distribution by the later of:

(A) April 1st of the year following the calendar year in which the participant attains age 70.5; or

(B) April 1st of the year following the year in which participant retires or otherwise has a separation from employment.

(e) Filing of distribution agreements by participants.

(1) This subsection applies when a participant becomes entitled to a distribution because:

(A) the participant has attained age 70.5; or

(B) the participant's employment with the State of Texas has terminated other than through death.

(2) A participant must file a single distribution agreement for all qualified investment products in which the participant's deferrals are invested.

(3) Notwithstanding anything to the contrary in this subsection, a participant who has not separated from service and who has reached age 70.5 may file a distribution agreement if the participant wants to begin distributions [to begin]. If distributions commence in the calendar year following the later of the calendar year in which the participant attains age 70.5 or the calendar year in which the separation from employment occurs, the distribution must be equal to the annual installment payment for the year, determined under the Uniform Lifetime Table of the Income Tax Regulations for the participant's age regarding types of distributions. This must also be paid before the end of the calendar year of commencement of distributions.

(4) Notwithstanding any other plan provision, amounts deferred by a former participant of the plan not yet payable or made available to such participant may be transferred to another eligible plan of which the former participant has become a participant, if:

(A) the plan receiving such amounts provides for its [their] acceptance; and

(B) a participant separates from service with the participant's agency and accepts employment with another entity maintaining an eligible deferred compensation plan [: and]

[(C) a participant has not yet begun receiving plan distributions.]

(5) A participant or a beneficiary of a participant who previously filed an irrevocable distribution election under the prior plan or under the revised plan may change that distribution election or cancel that distribution election by notifying the plan administrator. Such notification must be in writing on a distribution agreement form and received by the plan administrator at least 30 days prior to the scheduled distribution date.

(6) A participant may request a trustee-to-trustee transfer of assets from the prior plan or the revised plan to a governmental defined benefit plan in the same state or another state for the purchase of permissible service credit (as defined in the [Internal Revenue] Code §414(d) and (p) [§414(p)] and [Internal Revenue] Code §415(n)(3)(A)) under such plan or a repayment to which [Internal Revenue] Code §415 does not apply by reason of subsection (k)(3) thereof. The participant may elect to have any portion of the account balance transferred to a governmental defined benefit plan.

(7) Upon receipt of a certified copy of a qualified domestic relations order, a certified copy of a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a participant, and same is made pursuant to the domestic relations law of any state, then the amount of the participant's account balance shall be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment shall be made without regard to whether the participant is eligible for a distribution of benefits under the plan. The plan administrator or TPA shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order [the plan administrator may distribute to an alternate payee in a lump sum immediate distribution, the proceeds as directed by the order.] (§414(p) of the Code and §1.457-10(c) of the Income Tax Regulations)

(8) At a participant's or surviving spouse's request, the plan administrator may process a trustee-to-trustee transfer of an eligible rollover distribution upon receipt of appropriate instructions from the receiving plan.

(f) Minimum distributions during the life of a participant.

(1) This subsection applies to distributions to a participant during the life of the participant, notwithstanding anything to the contrary in the participant's distribution agreement.

(2) The amount distributed to the participant must be calculated so that the distributions:

(A) will be distributed over a period not exceeding the life expectancy of the participant as set forth in the Uniform Lifetime Table of the Income Tax Regulations for the participant's age on the participant's birthday for that year or the life expectancy of the participant and the participant's named beneficiary; [and]

(B) will satisfy the minimum distribution requirements of the ~~[Internal Revenue]~~ Code ~~[of 1986 as amended,]~~ §457(d)(2), §401(a)(9), ~~[EGTRRA]~~ and associated statutes and regulations; and~~[-]~~

(C) For the purpose of paragraph (2) of this subsection, life expectancies may not be recalculated annually. For any year, the participant can elect distribution of a greater amount not to exceed the amount of the remaining account balance in lieu of the amount calculated using this formula.

(3) The plan administrator shall reject a proposed distribution agreement that does not comply with paragraph (2) of this subsection. The plan administrator shall require the amendment of an existing distribution agreement that does not comply with paragraph (2) of this subsection.

~~{{(4) For the purpose of paragraph (2) of this subsection, life expectancies may not be recalculated annually.}}~~

(g) Review of distribution agreements by the plan administrator. The plan administrator shall review each distribution agreement received to ensure that:

(1) a distribution would be in compliance with the sections in this chapter; and

(2) the minimum distribution requirements of this section have been satisfied.

(h) Amendments of distribution agreements.

(1) Beginning date for a distribution. The beginning date for a distribution may be deferred or cancelled, and the amended distribution agreement must be received by the plan administrator no later than the 30th day before the original distribution begin date.

(2) Frequency of distribution. The frequency of a distribution may be amended if the plan administrator receives an amended distribution agreement no later than the 30th day before the next scheduled ~~[beginning date of the first]~~ distribution.

(3) Amount of distribution. The amount to be distributed during each time period may be amended only if the plan administrator receives an amended distribution agreement no later than the 30th day before the next scheduled ~~[beginning date of the first]~~ distribution.

(4) Beneficiaries.

(A) The primary and secondary beneficiaries named in a distribution agreement may be changed at anytime by filing a change agreement with the agency coordinator of the state agency at which the participant was employed or by submitting a beneficiary designation form directly with the TPA, for the revised plan.

(B) Upon receipt of the change agreement, the agency coordinator shall send a copy of the agreement to the plan administrator.

(C) The change agreement is effective upon receipt by the plan administrator.

(D) A beneficiary designation that names a former spouse is invalid unless the designation was signed after the date of divorce and received by the plan administrator.

(5) Unforeseeable emergency distribution ~~[Emergency withdrawals]~~. Notwithstanding anything to the contrary in this subsection, a distribution agreement may be amended to relieve a severe financial hardship caused by an unforeseeable emergency.

(6) Procedures for amending a distribution agreement.

(A) A participant or beneficiary who wants to amend the participant's distribution agreement must file an amended distribution agreement with the plan administrator. The amended distribution agreement must contain the word "Amended" at the top of the agreement.

(B) Upon receipt of the amended distribution agreement, the plan administrator; shall promptly review the agreement for compliance with the sections in this chapter.

(C) If the amended distribution agreement does not comply with the sections in this chapter, the agreement will be returned to the participant or beneficiary for corrections.

(D) After the plan administrator receives a signed distribution agreement, the plan administrator and the prior plan vendor or TPA covered by the agreement shall take the steps specified in subsections (h) and (j) of this section.

(7) Effective date of amended distribution agreements is no later than 30 days after the plan administrator receives the form. An amended distribution agreement is effective with the next ~~[first]~~ distribution.

(i) Procedure for making distributions.

(1) Upon receiving a letter of authorization, the prior plan vendor or TPA shall issue checks payable to the participant or beneficiary and mail the checks as instructed in the letter of authorization.

(2) The plan administrator may not complete any forms provided by a prior plan vendor in connection with a distribution. A prior plan vendor may not require the plan administrator to submit periodic letters of authorization beyond the initial letter of authorization unless the plan administrator has agreed in writing. A prior plan vendor may not impose any requirements as a prerequisite to a distribution that are not specifically mentioned in the sections in this chapter.

(3) The plan administrator shall provide each prior plan vendor with the names and signatures of the individuals who are authorized to sign letters of authorization.

(4) A prior plan vendor shall confirm each letter of authorization as instructed in the letter.

(j) Unforeseeable emergency distribution ~~[Emergency withdrawals]~~.

~~{{(1) A participant may request an emergency withdrawal regardless of whether a distribution to the participant has already started.}}~~

(1) [(2)] The participant must request the unforeseeable emergency withdrawal by filing a completed emergency hardship withdrawal application with the plan administrator. An emergency hardship withdrawal application [:] must show that the prerequisites for making an unforeseeable emergency withdrawal have been fulfilled.

~~{{(A) must show that the prerequisites for making an emergency withdrawal have been fulfilled; and }}~~

~~{{(B) must be accompanied by two copies of a Form W-4P specifically tailored to the withdrawal.}}~~

(2) [(3)] The plan administrator shall approve the unforeseeable emergency withdrawal if the plan administrator determines that:

(A) an unforeseeable emergency has occurred;

(B) the severe financial hardship cannot be relieved;

(i) through reimbursement or compensation by insurance or otherwise;

(ii) by liquidating the assets of the participant to the extent the liquidation of the assets would not itself cause severe financial hardship;

(iii) by cessation of deferrals under the plan;

(iv) by other distributions or nontaxable loans from the Plan or any other qualified retirement plan, or by borrowing from commercial sources on reasonable commercial terms; or

(v) through a combination of the actions specified in clauses (i) - (iii) of this subparagraph; and

(C) the unforeseeable emergency withdrawal would satisfy the federal regulations for unforeseeable emergency withdrawals under the [Internal Revenue] Code [of 1986,] §457[, as amended and, EGTRRA].

(3) [(4)] If the plan administrator approves an unforeseeable emergency withdrawal, the plan administrator shall determine the amount of the withdrawal. The amount may not exceed the amount reasonably needed to overcome the severe financial hardship, after considering the federal income tax liability resulting from the withdrawal.

(4) [(5)] The term "unforeseeable emergency" means a severe financial hardship to a participant caused by:

(A) a sudden and unexpected illness or accident of a participant or of a participant's dependent (as defined in the [Internal Revenue] Code §457, [of 1986 as amended], §152(a), and the Working Families Tax Relief Act of 2004 [and EGTRRA];

(B) the loss of the property of a participant because of a casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, as a result of a natural disaster); or

(C) a similar extraordinary and unforeseeable circumstance arising from events beyond the control of a participant, which includes the prevention of imminent foreclosure or eviction from a participant's [participant] or beneficiary's primary residence, funeral expenses of participant's dependents (as defined in §152(a) of the Code and the Working Families Tax Relief Act of 2004), and payment of non-reimbursed medically necessary expenses, which includes non-refundable deductibles, as well as the cost of prescription drug medications.

(5) [(6)] The term "unforeseeable emergency" excludes:

(A) the necessity to send a child to college;

(B) the purchase of a home; [and]

(C) such emergency that is or may be relieved through:

(i) reimbursement or compensation from insurance or otherwise;

(ii) liquidation of the participant's assets, to the extent the liquidation would not itself cause severe financial hardship; or

(iii) by cessation of deferrals under the plan. This includes other distributions or nontaxable loans from the Plan or any other qualified retirement plan, or by borrowing from commercial sources on reasonable commercial terms; and

(D) [(E)] other similar circumstances.

(6) [(7)] The plan administrator may rely on the information provided by a participant in connection with the participant's request for an emergency withdrawal. The participant is solely responsible for the sufficiency, accuracy, and veracity of the information.

(7) [(8)] If the plan administrator denies a participant's request for an emergency withdrawal or if the participant disagrees with the amount of the approved emergency withdrawal, the participant may appeal to the Employees Retirement System of Texas in accordance with §87.23 of this title (relating to the Grievance Procedure).

(8) [(9)] If the plan administrator approves a participant's request for an emergency withdrawal, the participant must agree to cease all deferrals, except deferrals to life insurance products, to both this plan and the TexaSaver 401(k) plan for a six month period following the approval.

(9) [(10)] The plan administrator may not approve an emergency withdrawal request from a primary or secondary beneficiary.

(10) The plan administrator may not exceed the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution).

(k) [One-time election of distribution that does not exceed the dollar limit under Internal Revenue Code §457 of 1986 as amended, §457(e)(9) and EGTRRA.] A participant may elect to receive a one-time distribution of the total account balance if:

(1) such amount does not exceed the \$5000 dollar limit under [Internal Revenue] Code §457 [of 1986, as amended], §457(e)(9), [and EGTRRA] or the dollar limit under Code §411(a)(11) if greater as of the date that payments commence or on the date of the participant's death. In such event, payment shall be made to the participant (or to the beneficiary if the participant is deceased) in a lump sum equal to the participant's account balance [as of the date of the election];

(2) no amount has been deferred under the plan with respect to such participant during the two-year period ending on the date of the distribution;

(3) there has been no prior distribution under the plan to such participant to which this subsection applied; and

(4) a one-time election form is completed and submitted to the plan administrator through the participant's state agency coordinator.

(l) Naming of beneficiaries. When a participant or beneficiary files a distribution agreement, the participant or beneficiary may name one or more primary and secondary beneficiaries. The naming of beneficiaries in a distribution agreement supersedes any previous naming of beneficiaries in a participation agreement or change agreement.

(m) Death of a participant when the participant has named a beneficiary.

(1) This subsection applies only if a participant has named a beneficiary in a participation agreement, change agreement, beneficiary designation form or distribution agreement.

[(2) When this subsection requires the plan administrator to order a distribution, the plan administrator shall order the distribution on the 90th day after a participant's death:]

(2) [(3)] The plan administrator shall order a distribution to a primary beneficiary if the beneficiary:

(A) survives the participant; and

(B) is alive on the date of the order.

(3) ~~[(4)]~~ The plan administrator shall order a distribution to a secondary beneficiary if:

- (A) the secondary beneficiary survives the participant;
- (B) the secondary beneficiary is alive on the date of the order; and
- (C) no primary beneficiaries survive the participant.

(4) ~~[(5)]~~ The plan administrator shall order a distribution in accordance with subsection (p) of this section if a primary or secondary beneficiary survives the participant but is not alive on the date of the order.

(5) ~~[(6)]~~ This paragraph applies if a participant designates more than one primary beneficiary and more than one primary beneficiary survives the participant. The plan administrator shall order the distribution of the participant's deferrals and investment income to the surviving primary beneficiaries in equal shares unless the distribution agreement provides otherwise. The estates and heirs of the primary beneficiaries who did not survive the participant and the surviving secondary beneficiaries, if any, may not receive any benefits.

(6) ~~[(7)]~~ This paragraph applies if a participant designates more than one secondary beneficiary, more than one secondary beneficiary survives the participant, and no primary beneficiary survives the participant. The plan administrator shall order the distribution of the participant's deferrals and investment income to the surviving secondary beneficiaries in equal shares unless the distribution agreement provides otherwise. The estates and heirs of the primary and secondary beneficiaries who did not survive the participant may not receive any benefits.

(7) ~~[(8)]~~ The plan administrator shall order the lump-sum payment to the participant's estate of the balance of the participant's deferrals and investment income if:

- (A) the participant named a primary and a secondary beneficiary but neither survived the participant; or
- (B) the participant named a primary beneficiary but did not name a secondary beneficiary and the primary beneficiary did not survive the participant.

(8) ~~[(9)]~~ The plan administrator shall order the lump-sum distribution of a participant's deferrals and investment income to the person entitled to receive the distribution if the person is alive on the date of the order and the person files a distribution agreement requesting a lump-sum distribution.

(9) ~~[(10)]~~ When the plan administrator orders a distribution to a primary or secondary beneficiary, the plan administrator's order must be in accordance with the beneficiary's distribution agreement so long as the agreement complies with the sections in this chapter.

(10) ~~[(11)]~~ This paragraph applies when the plan administrator orders other than a lump-sum distribution to a primary or secondary beneficiary and distributions to the participant did not begin before the participant's death. For distributions to a surviving spouse, any distribution made before the calendar year in which the participant would have attained age 70.5 is not a required minimum distribution. For the calendar year in which the participant would have attained age 70.5 or any later year, the amount of the minimum annual distribution payment may be treated as the amount of the required minimum distribution. Notwithstanding a primary or secondary beneficiary's distribution agreement, the amount distributed must be calculated so that the distributions:

- (A) will begin no later than December 31 in the year that the participant would have attained age 70.5 or December 31 of the

year following the participant's death, whichever is later for a spousal beneficiary; or

(B) December 31 of the year following the participant's death and entire amount must be distributed by the end of the fifth year following the year of participant's death for non-spousal beneficiary.

(C) will be made over the life of the person receiving the distributions or over a period not extending beyond the life expectancy of the person (using the single life table from the Income Tax Regulations);

(D) will be made in substantially non-increasing amounts;

(E) will be made annually or more frequently than annually after the first distribution; and

(F) will satisfy the minimum distribution requirements of the [Internal Revenue] Code [of 1986 as amended,] §457(d)(2), §401(a)(9), and EGTRRA and associated statutes and regulations.

(11) ~~[(12)]~~ This paragraph applies when the plan administrator orders other than a lump-sum distribution to a primary or secondary beneficiary and distributions to the participant began before the participant's death. Notwithstanding a primary or secondary beneficiary's distribution agreement, the amount distributed to the primary or secondary beneficiary must be calculated so that the distributions:

(A) will be made at least as rapidly as under the method of distribution selected by the participant; and

(B) will satisfy the minimum distribution requirements of the [Internal Revenue] Code [of 1986 as amended,] §457(d)(2), and §401(a)(9) [and EGTRRA].

(12) ~~[(13)]~~ If a participant dies before distributions to him began and the beneficiary or secondary beneficiary entitled to receive the participant's deferrals and investment income is the participant's surviving spouse, this paragraph applies.

(A) Paragraph (10) ~~[(11)]~~ of this subsection applies to the distributions to the surviving spouse except as specified in this paragraph.

(B) Notwithstanding paragraph (10) ~~[(11)]~~ of this subsection, the surviving spouse may delay the start of the receipt of the deferrals and investment income until a date not later than the date when the participant would have attained age 70.5.

(C) Notwithstanding paragraph (10) ~~[(11)]~~ of this subsection, after a distribution to the surviving spouse begins, the entire amount must be paid over a period not exceeding the spouse's life expectancy using the single life table from the Income Tax Regulations for the beneficiary's age on the beneficiary's birthday for the year that the distribution begins, reduced by one for each year that has elapsed after that year.

(D) If the surviving spouse dies before distributions to the spouse begin, then the surviving spouse is a participant for the purpose of paragraph (10) ~~[(11)]~~ of this subsection.

~~[(14) The plan administrator shall reject a proposed distribution agreement that does not comply with paragraphs (11)-(13) of this subsection. The plan administrator shall require the amendment of an existing distribution agreement that does not comply with paragraphs (11)-(13).]~~

(14) ~~[(15)]~~ For the purpose of paragraphs (10) - (12) ~~[(11)-(13)]~~ of this subsection, life expectancies may not be recalculated annually.

(n) Death of a participant when the participant has not named a beneficiary.

(1) This subsection applies only when a participant has not named a beneficiary in a participation agreement, change agreement, beneficiary designation form, or distribution agreement.

(2) The plan administrator shall order the distribution to the participant's estate of the balance of the participant's deferrals and investment income.

(o) Death of a beneficiary.

(1) This subsection applies if:

(A) a participant named a beneficiary in a participation agreement, change agreement, or distribution agreement or a beneficiary designation form;

(B) the participant died;

(C) the beneficiary survived the participant but has since died;

(D) the plan administrator has ordered, in accordance with subsection (m) of this section, a distribution to the beneficiary or would have ordered a distribution to the beneficiary if the beneficiary had not died; and

(E) the beneficiary did not receive all the participant's deferrals and investment income before the beneficiary's death.

(2) If the deceased beneficiary filed a distribution agreement and the agreement names a primary beneficiary, the plan administrator shall:

(A) allow the primary beneficiary to have a distribution which will be made at least as rapidly as under the method of distribution selected by the participant, and which will also satisfy the minimum distribution requirements of the [Internal Revenue] Code [of 1986 as amended,] §457(d)(2), and §401(a)(9) [and EGTRRA]; or

(B) order a lump sum payment to the primary beneficiary's estate if the primary beneficiary survived the beneficiary who filed the distribution agreement but is not alive on the date of the order.

(3) If the deceased beneficiary filed a distribution agreement and the agreement names a secondary beneficiary, the plan administrator shall order a lump-sum payment to:

(A) the secondary beneficiary if:

(i) the secondary beneficiary is alive on the date of the order; and

(ii) no primary beneficiary survived the deceased beneficiary;

(B) the secondary beneficiary's estate if:

(i) the secondary beneficiary survived the deceased beneficiary;

(ii) the secondary beneficiary is not alive on the date of the plan administrator's order; and

(iii) no primary beneficiary survived the deceased beneficiary.

(4) The lump-sum payment must be made to the estate of the deceased beneficiary if:

(A) the deceased beneficiary's distribution agreement does not name a beneficiary;

(B) the deceased beneficiary did not file a distribution agreement; or

(C) no beneficiary named in the deceased beneficiary's distribution agreement survived the deceased beneficiary.

(5) When more than one primary or secondary beneficiary of a deceased beneficiary is entitled to a lump-sum distribution, the distributions must be made in equal shares unless the deceased beneficiary's distribution agreement provides otherwise.

(p) Distributions to minors and incompetents.

(1) The plan administrator may authorize the payment of a distribution to a person or entity other than the participant or beneficiary otherwise entitled to receive the distribution if satisfactory evidence is presented to the plan administrator that the participant or beneficiary is:

(A) a minor; or

(B) has been adjudicated by a court of law as mentally incompetent and unable to provide a valid release, receipt and discharge for the payment or is deemed so by the plan administrator.

(2) If the conditions of the preceding paragraph are satisfied, the plan administrator shall make the distribution payable to the guardian of the participant or beneficiary. Such payments shall be considered a payment to such participant or beneficiary, and shall, to the extent made, be deemed a complete discharge of any liability of the Plan, State of Texas, plan administrator and TPA for all payments required under the plan.

(3) If no guardian has been appointed and after having obtained a proper release, the plan administrator shall make the distribution payable to:

(A) the person or entity maintaining custody of the participant or beneficiary;

(B) the custodian of the participant or beneficiary under the Texas Uniform Gifts to Minors Act (Texas Property Code, §141.002 et seq.) if the participant or beneficiary resides in the State of Texas;

(C) the custodian of the participant or beneficiary under a law similar to the Texas Uniform Gifts to Minors Act if the participant or beneficiary resides outside the State of Texas; or

(D) the court of law with jurisdiction over the participant or beneficiary.

(q) Distributions to missing persons.

(1) This subsection applies when the plan administrator is unable to determine the location of a participant or beneficiary who is entitled to a distribution.

(2) When the plan administrator does not know the location of a participant or beneficiary, the agency coordinator for the participant or beneficiary must send a certified letter to the last known address of the participant or beneficiary.

(3) If the certified letter does not result in the discovery of the location of the participant or beneficiary, the agency coordinator shall inform the plan administrator and provide proof to the plan administrator that the certified letter was sent.

(4) When the plan administrator does not know the location of a participant or beneficiary, the agency coordinator, TPA or plan administrator shall make a reasonable attempt to locate the participant or beneficiary through certified mail at the last known address, through notification to the Social Security Administration, the Pension Benefit Guaranty Corporation, or other appropriate source. If the participant

has not responded within six (6) months, upon ~~Upon~~ receiving the notification and proof of mailing ~~[from an agency coordinator]~~, the plan administrator may direct that all benefits due the participant or beneficiary be deposited in a qualified investment product or trust fund that the plan administrator has specifically designated for this purpose and shall continue to hold the benefits due such person.

(r) Processing of distributions and emergency withdrawals. A prior plan vendor or TPA shall process distributions and emergency withdrawals and resolve administrative problems with the plan administrator within a reasonable length of time, not to exceed the 30th day after receiving a letter of authorization for distributions and not to exceed the 15th day after receiving a letter of authorization for emergency withdrawals.

(s) Loans to participants. The plan administrator is authorized to implement procedures to establish a loan program for the revised plan in compliance with Code §72(p)(2). Plan loans shall be permitted only from assets deposited in the revised plan. Participants with account balances in the prior plan must transfer those balances to the revised plan in order to qualify for a plan loan. The security of the loan is a pledge or application fee of \$50 per loan. General loans are processed without any pre-loan paperwork. A participant's execution on the loan check authorizes the plan administrator to make payroll deductions from the participant's compensation. The loan balance may be prepaid at any time without penalty. The maximum number of active loans available to any participant at any given time is two (2) per plan.

(1) Loans made pursuant to this section (when added to the outstanding balance of all other loans made by the plan to the participant) shall be limited to the lesser of:

(A) \$50,000 reduced by the excess (if any) of the highest outstanding balance of loans from all plans to the participant during the one year period ending on the day before the date on which such loan is made, over the outstanding balance of loans from all plans to the participant on the date on which such loan was made; or

(B) the greater of one half (1/2) of the present value of the non-forfeitable accrued benefit of the participant under the plan; or \$10,000.

(2) Any loan may not be for an amount less than \$1,000.

(3) The terms of the loan shall:

(A) require level amortization with payments not less frequently than quarterly throughout the repayment period, except that alternative arrangements for repayment may apply in the event that the participant is on a bona fide unpaid leave of absence for military leave within the meaning of §414(u) of the Code or for the duration of a leave which is due to qualified military service;

(B) require that the loan be repaid within five years unless the participant certifies in writing to the plan administrator that the loan is to be used to acquire a principal residence; and

(C) provide for either a general purpose loan or a principal residence loan with rates and terms fixed for the life of the loan. Subject to change from time to time, the interest rate for repayment is one percent (1%) over the prime rate published in the Wall Street Journal on the last business day of the prior month.

(4) Any loan to a participant under the plan shall be secured by the pledge of the portion of the participant's interest in the plan invested in such loan.

(5) ~~[(4)]~~ In accordance with the federal Soldiers' & Sailors' Civil Relief Act of 1940, interest will accrue during the period of suspended payments at the original loan rate or at the rate of six percent (6%), whichever is less. In no event will interest on any loan exceed the maximum rate permitted by applicable law.

(6) In the event that a participant fails to make any loan payment within 90 days after the date such payment is due, a default on the loan shall occur. In the event of such default, all remaining payments on the loan shall be immediately due and payable, effective as of the first day of the calendar month following the month in which a default occurs. In the case of any loan default, the plan administrator shall apply the portion of the participant's interest in the plan held as security for the loan in satisfaction of the loan on the date of severance from employment. In addition, the plan administrator shall take any legal action it shall consider necessary or appropriate to enforce collection of the unpaid loan, and the costs of any legal proceeding or collection including but not limited to the plan administrator's and TPA's reasonable attorneys fees, costs and prejudgment and postjudgment interest shall be charged to the account balance of the participant. Any defaulted loans incurred will continue to accrue interest and will reduce the number of available loans. Amounts borrowed through the loan program are not taxable distributions and are not subject to federal income taxes, unless the participant defaults on the loan. Loans are considered in default if no payments have been made for 90 days, or general loans are not paid off within five (5) years. If a participant retires or separates from employment, payroll deductions will stop and the loan is immediately due and payable in full. If the loan is not paid within the 90 day period, the outstanding balance, pursuant to IRS regulations, will be considered a distribution, and the plan administrator shall report the loan to the IRS as a taxable distribution in the year that the loan defaults. In the event a loan is outstanding or in default or both hereunder on the date of a participant's death, the participant's estate shall be the beneficiary as to the portion of participant's interest in the plan invested in such loan.

(7) ~~[(2)]~~ In accordance with ~~[Internal Revenue]~~ Code §72 (p) and associated Treasury Regulations at §1.72(p)-1, the Plans will suspend payments for up to twelve (12) months for non-military leaves of absence if the participant ~~[Participant]~~ is on a bona fide leave of absence and the leave is either without pay, or the participant's ~~[Participant's]~~ after-tax pay is less than the installment payment amount under the terms of the loan. When payments resume, installment payments may not be less than the amount required under the terms of the original loan. In no event may the term of the loan be extended beyond its original due date; accept upon express approval of the hardship committee. Therefore, the participant must seek a revised amortization schedule and pay higher monthly payments or continue the original payment schedule and make one or more additional payments before the end of the loan term in sufficient amounts to pay the loan in full when due.

(8) As a condition of the loan, a participant shall be required to enter into an irrevocable agreement authorizing the employer to make payroll deductions from his or her compensation as long as the participant is an employee and to transfer such payroll deduction to the Trustee or TPA in payment of such loan plus interest. Repayments of a loan shall be made by payroll deduction of equal amounts (comprised of both principal and interest) from each paycheck, with the first such deduction to be made as soon as practicable after the loan funds are disbursed; provided, however:

(A) that a participant may prepay the entire outstanding balance of his or her loan at any time without penalty (but may not make a partial prepayment); and

(B) that if any payroll deductions cannot be made in full because a participant is on an unpaid leave of absence or is no longer

employed by a participating employer (that has consented to make payroll deductions for this purpose) or the participant's paycheck is insufficient for any other reason, the participant shall pay directly to the plan the full amount that would have been deducted from the participant's paycheck, with such payment to be made by the last business day of the calendar month in which the amount would have been deducted. Such participants will repay themselves with interest through payroll deductions in equal installments over the duration of the loan. Loan repayments are deducted each pay period and posted along with contributions. Loan refinancing is not available.

(t) Federal withholding and reporting requirements.

(1) A prior plan vendor or TPA shall file all reports required by the Internal Revenue Service (IRS) when any deferrals and investment income are distributed or otherwise made available to a participant or beneficiary. Payments made to a participant during the participant's life must be reported as taxable wages on a Form 1099-R or another appropriate form which may be hereafter promulgated by the IRS. Pursuant to the provisions of Internal Revenue Service Revenue Ruling 86-109 (1986-2 CB 196), payments to the beneficiary of a deceased participant must be reported on IRS Form 1099-R (or another appropriate form which may be hereafter promulgated by the IRS) as taxable income of the beneficiary.

(2) A prior plan vendor or TPA shall file an application for authorization to act as agent of the State of Texas, or effective January 1, 1999, the plan, with the District Director of the Internal Revenue Service Center where the prior plan vendor or TPA files its returns. The application shall include Form 2678 - Employer Appointment of Agent under §3504 [Section 3504] of the [Internal Revenue] Code, which shall be supplied by the plan administrator, and shall be completed and filed in accordance with the instructions set forth in Internal Revenue Service Publication 1271. The prior plan vendor shall promptly furnish to the plan administrator a copy of such vendor's letter of authorization from the Internal Revenue Service approving the appointment of the prior plan vendor as agent.

(3) When reporting to the Internal Revenue Service, the prior plan vendor and TPA shall use the vendor's Federal Employer Identification Number and shall comply with all requirements of Revenue Procedure 70-6 as set out in Internal Revenue Service Publication 1271 and as subsequently amplified or superseded by subsequent Revenue Procedures. A prior plan vendor may not use the federal employer identification number of the plan, plan administrator, TPA, or the State of Texas. Regardless of how many qualified investment products a prior plan vendor sponsors, the vendor must use the same federal employer identification number for all reports to the Internal Revenue Service.

(4) Federal tax withholding is mandatory for distributions to participants. A prior plan vendor or TPA shall accurately determine any amounts to be withheld for federal taxes based on a Form W-4P submitted by the participant at the time of a distribution. ~~[If no Form W-4P is provided, the participant must be considered single with no dependents.]~~ Distributions with a periodic payout of less than 10 years or a lump sum distribution are subject to a mandatory 20% federal income tax withholding. If no Form W-4P is provided, the participant shall be taxed as "single with no dependents." Vendors who maintain participant account balances in the prior plan shall provide the required IRC §402(f) [402(f)] safe harbor notice to all 457 plan participants or their beneficiaries prior to the payment of an eligible rollover distribution. The Tax Equity and Fiscal Responsibility Act does not apply to a deferred compensation plan governed by the [Internal Revenue] Code [of 1986 as amended,] §457 [and EGTRRA].

(5) Total death benefits, including life insurance proceeds, are taxable as ordinary income to the beneficiary and must be reported on a Form 1099-R in accordance with paragraph (m) of this subsection.

(6) A prior plan vendor or TPA shall mail a copy of all reports filed with the Internal Revenue Service about a participant or beneficiary to the participant's or beneficiary's home address.

(u) Notwithstanding any provisions to the contrary, the option to receive periodic distributions from a product in the "prior plan" by a terminated participant or beneficiary whose original distribution begins on or after October 1, 2004 is removed. Effective October 1, 2004, terminating participants and beneficiaries must transfer all funds to the revised plan, receive a lump sum distribution of their entire plan balance, or roll their entire account balance into an account outside of the prior plan.

§87.19. Reporting and Recordkeeping by Prior Plan Vendors.

(a) Definition of current market value. In this section, the term "current market value" has the following meanings.

(1) For an investment in a qualified investment product offered by a bank, credit union, or savings and loan association, current market value means the amount of deferrals plus investment income minus withdrawals minus applicable fees.

(2) For an investment in a mutual fund, current market value means the price of each share at the end of the calendar quarter multiplied by the number of shares purchased with deferrals and investment income minus applicable fees.

(3) For an investment in a term life insurance product, the current market value is usually zero.

(4) For an investment in a life insurance product, current market value means the cash value of the product minus applicable fees.

(5) For an investment in an annuity, current market value equals the amount of deferrals plus investment income minus payouts minus applicable fees. For annuitized accounts, current market value means the present value of all remaining payments, taking into consideration the prevailing statutory interest rates pursuant to the Texas Insurance Code, Article 3.28.

(b) Reports to participants or beneficiaries.

(1) Generally.

(A) A prior plan vendor shall issue a report after the end of each calendar quarter to each participant or beneficiary whose deferrals and investment income are invested in a qualified investment product offered by the prior plan vendor, except if the investment is in a product that is annuitized.

(B) The report shall cover all transactions during a calendar quarter.

(C) A prior plan vendor shall ensure that the participant or beneficiary receives the report no later than the 45th day after the end of each calendar quarter.

(D) The report must show for each qualified investment product:

(i) the amount of the participant's or beneficiary's deferrals and investment income in the product, including transfers;

(ii) the amount of applied product costs or surrender charges;

(iii) the date and amount of withdrawals during the reporting period; and

(iv) the current market value of the participant's or beneficiary's deferrals and investment income.

(2) Investments in life insurance products. The requirements of the preceding paragraph apply to investments of deferrals and investment income in life insurance products except:

(A) the report is due at least once each calendar year instead of after each calendar quarter; and

(B) the period covered by the report may be either the calendar year or the product year.

(3) Final reports. If a participant or beneficiary receives a lump-sum distribution, the prior plan vendor or TPA from whom the lump-sum distribution is made shall issue a final report to the participant or beneficiary containing the information required in paragraph (1) of this subsection. The report must accompany the lump-sum distribution.

(c) Capital category reports. Once each quarter, or more frequently if appropriate, a prior plan vendor which is a bank or savings and loan association shall report to the plan administrator that financial information regarding capital categories and risk-based ratios described in §87.7(i) and (j) of this title (relating to prior plan vendor participation).

(d) Reports and remittance to the plan administrator.

(1) Frequency and coverage of reports and payment of fees. Every vendor in the prior plan that has participant or beneficiary deferrals, investment income, and/or annuitized accounts must ensure that the plan administrator receives a report no later than the 15th day after the end of each calendar quarter. Every prior plan vendor must also remit any fees assessed to it by the plan administrator, no later than the 15th day after the end of each quarter. Every vendor must ensure that the plan administrator receives a special report at the end of the fiscal year (August 31st), no later than fifteen days past fiscal year end - September 5th [15th], in addition to the normal quarterly reporting schedule. The report must be in the format specified in this subsection and must cover all transactions during the calendar quarter.

(2) Content of reports. For each participant or beneficiary whose deferrals and investment income are invested in a qualified investment product offered by the vendor, the report required by this subsection must contain but is not limited to:

(A) the participant's or beneficiary's name, agency code and social security number(s);

(B) a list of the qualified investment products in which the participant's or beneficiary's deferrals and investment income have been invested even if the investment is in a product that is annuitized;

(C) the amount of monthly deferrals for the reporting period separated and listed per month;

(D) the interest and other income earned or lost during the reporting period through the investment of the deferrals and investment income;

(E) the amount of federal income tax withheld during the reporting period;

(F) the current market value of each participant's or beneficiary's deferrals and investment income in each qualified investment product, including annuitized accounts and, including, if appropriate, the number of shares and per share market value;

(G) the amount of fees that the prior plan vendor charged during the reporting period;

(H) the amount transferred in and out as a result of a change of product within a company, identified separately by each internal transfer;

(I) the amount of each plan administrator directed transfer in or out; and

(J) the amount of each separate net distribution to the participant or beneficiaries, except that multiple payments that fall on the same day should be combined into one account for quarterly reporting purposes.

(K) a report specifying how the fees assessed to the prior plan vendor by the plan administrator were calculated and the asset base on which the fee was based.

(3) Format of reports.

(A) All reports must be in the format prescribed by the plan administrator and follow the DCP quarterly reporting specifications on a:

(i) 5 1/4 or 3 1/2 inch high quality PC diskette;

(ii) manual form; or

(iii) electronic file transfer - use of file transfer protocol (FTP), via the Internet or as an attachment to an electronic mail (E-mail).

(B) Only prior plan vendors with less than fifty participants are eligible to report on a manual form.

(C) Before a prior plan vendor may use a medium other than a manual form to file a quarterly report with the plan administrator, the vendor must submit a written request along with a electronic transfer file, or diskette to the plan administrator. The ERS must approve and make arrangements with the prior plan vendor prior to testing the electronic file transfer. The electronic transfer file, or diskette must be in the format and contain the information prescribed by the DCP reporting specifications and contain the information that the plan administrator requires including the items listed in paragraph (d)(2)(A) - (J) of this subsection. Failure to submit data in the specified format will result in the return of the media without processing. If the plan administrator determines that the electronic transfer file, or diskette is inadequate, the plan administrator shall ensure that the number of participants whose deferrals and investment income are invested at any given time in the vendor's qualified investment products does not exceed 49.

(D) The product types must be defined and coded as prescribed by the plan administrator and as in the DCP quarterly reporting specifications.

(E) If a participant or beneficiary has invested deferrals and investment income in two or more qualified investment products offered by the same prior plan vendor and the products are of the same type, then the prior plan vendor must report a cumulative total of those deferrals and investment income.

(4) A prior plan vendor that fails to submit to the plan administrator any required report with an authorized signature or the assessed fee will be subject to formal reprimand. After two formal reprimands, a vendor may be expelled from the plan and subject to further liability as applicable.

(5) Late reports and/or fee payment.

(A) A report or fees are delinquent if the plan administrator receives the report and/or fees after the due date.

(B) A report or fees that are received before the due date but which are returned to the vendor for completion or correction are

delinquent if the plan administrator does not receive the completed or corrected version of the report or correct amount of fees within 10 days after the original due date.

(e) Recordkeeping. A prior plan vendor shall retain records concerning investments in each qualified investment product by each participant. The records must be retained until the expiration of the second year after the prior plan vendor has distributed all the participant's deferrals and investment income.

(f) Quarterly reconciliation. In accordance with §87.3(b)(3)(H) of this title (relating to Participation by State Agencies), an agency coordinator may be responsible for balancing participant and beneficiary records and reconciling those records with the data provided by qualified vendors and the plan administrator. Prior plan vendors shall assist the plan administrator and state agencies with correcting and explaining any discrepancies. Failure to assist the plan administrator and state agencies with this reconciliation will be considered a rules violation, and the plan administrator may take appropriate action under §87.21 of this title (relating to Remedies).

§87.33. *The Economic Growth and Tax Relief and Reconciliation Act.*

(a) The Economic Growth and Tax Relief and Reconciliation Act of 2001 (referred to as "EGTRRA" and/or "Act") allows a plan administrator to amend eligible 457 deferred compensation plans to provide additional benefits to participants. The following resolutions set forth the decisions and provisions effective January 1, 2002.

(b) Applicability.

(1) This section applies to the State of Texas Deferred Compensation 457 Plan as revised and adopted by the Employees Retirement System of Texas effective September 1, 2000, and filed with the Secretary of State. The plan as revised and adopted is incorporated into this section. Copies may be obtained upon request.

(2) This section also applies to the State of Texas Deferred Compensation 457 Plan adopted by the Employees Retirement System of Texas effective January 1, 1991, and as amended prior to adoption of the revised plan. The 1991 plan is referred to in this section as the "prior plan." Except as otherwise provided in this section, the provisions of §§87.1 through 87.31 of this title continue to apply to participation agreements, distribution agreements, and prior plan vendor contracts entered into pursuant to applicable provisions of the prior plan.

(3) This section takes effect January 1, 2002 and shall apply to deferrals, transfers/rollovers and distributions that take place on or after January 1, 2002.

(c) Administration of the revised plan. The plan administrator shall administer the revised plan in the manner provided in the plan and §87.3 of this title (relating to Administrative and Miscellaneous Provisions).

(d) Catch-up contributions during the three years prior to normal retirement age are increased to twice the applicable deferral limit.

(e) A participant age 50 or older during any calendar year shall be eligible to make additional pre-tax contributions in accordance with [Internal Revenue] Code §414(v) applicable to 457 plans, in excess of normal deferral amounts. A participant who elects to defer contributions under the normal catch-up provisions may not also defer under the special catch-up and [Internal Revenue] Code §414(v).

(f) Plan Loans - The plan administrator is authorized to implement procedures to establish a loan program for the revised plan. Plan loans shall be permitted only from assets deposited in the revised plan. Participants with account balances in the prior plan must transfer those balances to the revised plan in order to qualify for a plan loan.

(g) Distributions.

(1) Change or Cancellation of Irrevocable Distribution Elections - A participant or a beneficiary of a participant who previously filed an irrevocable distribution election under the prior plan or under the revised plan may change that distribution election or cancel that distribution election by notifying the plan administrator. Such notification must be in writing and received by the plan administrator at least 30 days prior to the scheduled distribution date.

(2) Purchase of Service [-]

(A) A participant may request a trustee-to-trustee transfer of assets from the prior plan or the revised plan to a governmental defined benefit plan in the same state or another state for the purchase of permissible service credit (as defined in [Internal Revenue] Code §414(d), §414(p), and §415(n)(3)(A)) under such plan or a repayment to which [Internal Revenue] Code §415 does not apply by reason of subsection (k)(3) thereof.

(B) Notwithstanding any other provision contained in this plan, the TPA, at the direction of the plan administrator, or as requested by a participant or beneficiaries, shall transfer part or all of the account of any non-terminated participant to the trust forming the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Judicial Retirement System of Texas Plan I or Plan II or any other eligible retirement plan for the purpose of purchasing service credit, provided that the recipient trust meets or purports to meet the requirements (as defined in Code §414(d), §414 (p) and §415(n)(3)(A)) and expressly permits such transfers to be accepted. In no event may the transfer exceed the amount necessary to purchase the service credit.

(3) The TPA and prior plan vendors who maintain participant account balances in the prior plan shall provide the required [Internal Revenue] Code §402(f) safe harbor notice to all 457 plan participants or their beneficiaries prior to the payment of an eligible rollover distribution.

(h) Cessation of Deferrals upon Emergency Withdrawal - If the plan administrator approves a participant's request for an emergency withdrawal, the participant must agree to cease all deferrals, except deferrals to life insurance products, to both this plan and the TexaSaver 401(k) plan for six months following the approval. Participants who were required to suspend deferrals as a result of an emergency withdrawal and whose suspension has equaled or exceeded 6 months as of January 1, 2002 may elect to resume contributions by re-enrolling in the revised plan.

(i) Qualified Domestic Relations Orders - Upon receipt of a certified copy of a qualified domestic relations order, the plan administrator may distribute to an alternate payee in a lump sum immediate distribution, the proceeds as directed by the order. The plan administrator shall develop procedures for the implementation of this section.

(j) The normal maximum amount of deferrals is increased to the lesser of \$14,000 [~~\$13,000~~] (as periodically adjusted in accordance with [Internal Revenue] Code §457(e)(15)) or 100% of a participant's includible compensation.

(k) At a participant's or surviving spouse's request, the plan administrator shall process a trustee-to-trustee transfer of an eligible rollover distribution upon receipt of appropriate instructions from the receiving plan.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 7, 2005.

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Paula A. Jones
General Counsel
Employees Retirement System of Texas
Earliest possible date of adoption: April 17, 2005
For further information, please call: (512) 867-7421



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER C. COMMERCIAL VEHICLE REGISTRATION AND INSPECTION ENFORCEMENT

37 TAC §4.36

The Texas Department of Public Safety proposes an amendment to §4.36, concerning Commercial Motor Vehicle Compulsory Inspection Program. Amendment to §4.36 is necessary in order to correct an inaccuracy listed in subsection (f)(2) of the current rule.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Mark Rogers, Major, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2116.

The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce the compulsory inspection of vehicles.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§4.36. *Commercial Motor Vehicle Compulsory Inspection Program.*

(a) - (e) (No change.)

(f) For purposes of the Commercial Motor Vehicle Compulsory Inspection Program, the term "commercial motor vehicle" means a self-propelled or towed vehicle used on a public highway to transport passengers or property if:

(1) (No change.)

(2) the vehicle is a farm vehicle with a gross weight, a registered weight, or a gross weight rating of [less than] 48,000 pounds or more;

(3) - (7) (No change.)

(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2005.

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Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

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For further information, please call: (512) 424-2135



CHAPTER 21. EQUIPMENT AND VEHICLE STANDARDS

37 TAC §21.1

The Texas Department of Public Safety proposes an amendment to §21.1, concerning Standards for Vehicle Equipment. The section provides specifications and performance standards for vehicle equipment to include lighting devices and after-market window sunscreening. The main purpose of this amendment is to correct a textual error in (f)(6)(A) that affected the flexibility of the medical exemption for vehicle window tint. This resulted in a limit on the extent of the medical exception.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be the fair administration of the law on vehicle window restrictions. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to E. Eugene Summerford, Legal Counsel, Vehicle Inspections and Emissions, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0543; or by fax at (512) 424-2774. All comments must be received within 30 days after publication of the proposal in the *Texas Register* and make reference to "Proposed Amendment to 37 TAC §21.1" in the subject line or in the beginning of the text.

The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §547.101, which authorizes the Department of Public Safety to adopt standards for vehicle equipment.

Texas Government Code, §411.004(3) and Texas Transportation Code, §547.101 are affected by this proposal.

§21.1. *Standards for Vehicle Equipment.*

- (a) - (e) (No change.)
- (f) Sunscreening, reflective, and privacy window devices.
 - (1) - (5) (No change.)
 - (6) Medical exceptions.

(A) Notwithstanding the foregoing provisions of this subsection, a motor vehicle operated by or regularly used to transport any person with a medical condition which renders them susceptible to harm or injury from exposure to sunlight or bright artificial light may be equipped, on all the windows except the windshield, with sunscreening devices that reduces the light transmittance to value of ~~not~~ less than 25%. An untinted film or glaze may be applied to the AS-1 area of the windshield of a motor vehicle provided the total visible light transmittance is not reduced by a value of 5%. Vehicles equipped with sunscreening devices under this medical exception shall not be operated on any highway unless, while being so operated, the driver or an occupant of the vehicle has in his possession a certificate issued by the Department of Public Safety.

(B) - (C) (No change.)

(7) (No change.)

(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Thomas A. Davis, Jr.

Director

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CHAPTER 23. VEHICLE INSPECTION

SUBCHAPTER F. VEHICLE INSPECTION STATION OPERATION

37 TAC §23.73

The Texas Department of Public Safety proposes amendments to §23.73, concerning Vehicle Inspection Fees. This section specifies the fees inspection stations may charge vehicle operators for and in conjunction with a vehicle inspection.

The primary reason for this proposal is the adoption by the Texas Commission on Environmental Quality (TCEQ) of 30 TAC §§114.80 - 114.87, and corresponding revisions to the Texas Inspection and Maintenance State Implementation Plan (Texas I/M SIP), adopted on November 17, 2004, and published in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11348). The corresponding rulemaking by the department is contained in proposed amendments to 37 TAC §23.93 (relating to Vehicle Emissions Inspection Requirements).

The significant amendment in this proposal is the adoption of the emissions testing fee as adopted by TCEQ for the Austin area Early Action Compact (EAC) I/M program for Travis and Williamson counties. Effective on September 1, 2005, in these

counties, the fee for an emissions inspection is \$16.00. Additional amendments are proposed to clarify allowable practices relating to advertising and the combination of services offered in conjunction with inspection services. During previous rulemaking, as published in the March 25, 2002, issue of the *Texas Register* (27 TexReg 2241), the department removed restrictions on offering vehicle inspections in conjunction with other products and services and related advertisements. The purpose was intended to allow cost saving promotions encouraging inspections during the mid-month prior to the first-week bottleneck after inspection certificates expired. However, based on vehicle owner complaints and subsequent investigations of those complaints, the department has determined that some vehicle owners have unknowingly paid for additional and unsolicited services in conjunction with the required inspection. This proposal will clarify that additional services must not be related to an item of inspection; must not be required as a prerequisite for obtaining an inspection; and any advertisement must clearly state such.

Oscar Ybarra, Chief of Finance, has determined that during the first five-year period the proposed rule is in effect, this proposal, in itself, will not have any significant fiscal implications. The proposal will result in the enforcement of rules adopted by TCEQ. Mr. Ybarra has reviewed the analysis of the fiscal impact of TCEQ's proposal as stated in the July 30, 2004 issue of the *Texas Register* (29 TexReg 7259) pages 7263-7264. The department's proposal in itself will not add any additional fiscal implications, but will result in the enforcement of the measures adopted by the TCEQ. In summary, TCEQ found significant fiscal impacts to state and local governments having vehicle fleets, no significant fiscal implications for small and micro-businesses, and a public benefit of reducing pollutants that contribute to ozone formation in Travis and Williamson counties at an estimated total cost as much as \$192.7 million for the first five-year period. Mr. Ybarra concurs in the fiscal analysis made by TCEQ, with the sole exception of governmental outsourcing of vehicle inspections. Outsourcing the inspection of government vehicles will cost the retail price of \$28.50, instead of \$16.00 as projected by TCEQ. During the first year, the cost of outsourcing is estimated to be \$23,883(\$13,408), increasing to \$73,786 in the second and full year of testing and projected to increase to \$80,627(\$45,272) in the fifth year (numbers following in parenthesis are those stated by TCEQ). Over a five-year period, the department estimates the inspection cost of government outsourcing vehicle inspections is \$332,567, not including repair cost estimates that are not affected by this proposal. The fiscal impacts indicated in this proposal are inclusive of and not cumulative to those identified in the 37 TAC §23.93 (relating to Vehicle Emissions Inspection Requirements) proposal.

Comments on the proposal may be submitted to E. Eugene Summerford, Legal Counsel, Vehicle Inspection and Emissions, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0543; or by fax at (512) 424-2774. All comments must be received no later than 30 days after publication in the *Texas Register* and should reference "Proposed Rule 37 TAC §23.73" in the subject line or in the beginning of the text.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §§548.301(b-1), 548.501, and 548.505, which authorizes the commission to establish a motor vehicle emissions inspection and maintenance program for vehicles subject to an early action compact, allows the department to collect advance payments for certificates, and

allows the department to establish a maximum emissions-related inspection fee, respectively.

Texas Government Code, §411.004(3) and Texas Transportation Code, §§548.301(b-1), 548.501, and 548.505 are affected by this proposal.

§23.73. Inspection Fees.

(a) The maximum inspection fees charged for all vehicles are set by statute or administrative rule. All required inspection items shall be examined with the inspection fees in accordance with the following schedule:

(1) Safety inspection--\$12.50.

(2) Mopeds--\$5.75.

(3) New passenger cars and light duty trucks [ear] initial (two-year certificate) inspection--\$21.75.

(4) Emissions only inspection. ~~[through April 30, 2002--\$13.00. On May 1, 2002 and thereafter, the emissions only inspection fee is as follows:]~~

(A) El Paso County--\$14.00. In the event, [Upon the implementation of] an approved Low Income Repair Assistance Program (LIRAP) is implemented--\$17.00.

(B) Counties with a motor vehicle emissions inspection and maintenance program as specified in 30 TAC §114.50 [All other counties]--\$27.00.

(C) Counties with a motor vehicle emissions inspection and maintenance program as specified in 30 TAC §114.80--\$16.00

(5) Vehicles subject to safety and emissions ~~[through April 30, 2002--\$25.50. On May 1, 2002 and thereafter, the safety and emissions] inspection. [fee is as follows:]~~

(A) El Paso County--\$26.50. In the event [Upon the implementation of] an approved Low Income Repair Assistance Program (LIRAP) is implemented--\$29.50.

(B) Counties with a motor vehicle emissions inspection and maintenance program as specified in 30 TAC §114.50 [All other counties]--\$39.50.

(C) Counties with a motor vehicle emissions inspection and maintenance program as specified in 30 TAC §114.80--\$28.50.

(b) The inspection fee is chargeable ~~[only]~~ at the time of the original inspection whether the vehicle is approved or disapproved. Every inspection shall be completed before a vehicle is approved or rejected.

(1) The inspection fee may be included in combination with other services or products not related to any item of inspection. Under no circumstance shall an inspection station require purchase or payment for these additional services or products as prerequisite in obtaining an inspection of a vehicle.

(2) The inspection fee may be advertised in conjunction with other products or services not related to any item of inspection. All advertisements of the inspection fee in conjunction or in combination with non-related services or products must clearly state that the purchase of the services or products are not required to obtain the required inspection at the fee specified in this section.

(3) The inspection fee must be billed on work orders as a separate item.

(4) The fee, or any portion of the fee, may be waived, or payment deferred, provided advance payment for certificates issued has been made to the department.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

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For further information, please call: (512) 424-2135



37 TAC §23.80

The Texas Department of Public Safety proposes amendments to §23.80, concerning Out-of-State Vehicle Identification Number Verification. The purpose of this section is to provide procedures for the Vehicle Identification Number (VIN) verification performed during the first-time state inspection for out-of-state vehicles.

Texas Transportation Code, §548.256, as amended by Senate Bill 5, Acts 2001, 77th Legislature, Regular Session, Chapter 967, §9, added subsections (c) and (d) effective until August 31, 2008. The department previously adopted amendments to §23.80, as published in the October 26, 2001, issue of the *Texas Register* (26 TexReg 8547) to effect these legislative changes. The amendments required inspection stations to collect \$225.00, retaining \$5.00 to cover their administrative costs, for the VIN verification as required by the statute. In a final judgment order for case number 102585, dated June 6, 2002, the 200th District Court, Travis County, held that §9, of Texas Senate Bill 5, as it amended Texas Transportation Code, §548.256(c) and (d) was unconstitutional. The main purpose of this rulemaking is to formalize the department's procedures in response to the court order and clarify issues concerning the VIN verification procedure.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications to state or local governments.

Mr. Ybarra also has determined that for each year of the first five-years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be a clearer understanding of the costs associated with the first-time inspection of a vehicle. There is no anticipated cost to individuals. The cost of compliance for small businesses, large businesses, and micro-businesses will be the same.

Comments on the proposal may be submitted to E. Eugene Summerford, Legal Counsel, Vehicle Inspections and Emissions, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0543; or by fax at (512) 424-2774. All comments must be received within 30 days after publication of the proposal in the *Texas Register* and make reference to "Proposed amendment to 37 TAC §23.80" in the subject line or in the beginning of the text.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §548.002, which

allows the Department of Public Safety to adopt rules to administer the compulsory inspection of vehicles; Texas Transportation Code, §548.256(a) and (b), which provides that the department prescribe and provide the form used for VIN verifications; and Texas Transportation Code, §548.501(a), that sets the fee for the verification form.

Texas Government Code, §411.004(3) and Texas Transportation Code, §§548.002, 548.256 and 548.501 are affected by this proposal.

§23.80. Out-of-State Vehicle Identification Number Verification.

(a) Purpose. The purpose of this rule is to provide procedures to effect the provisions of [implement] Texas Transportation Code, §548.256[- as amended by Senate Bill 5, 77th Legislature (2001)-], relating to the verification form required for the registration of an out-of-state vehicle [vehicles]. These procedures reflect the final judgment order by the 200th District Court, Travis County, case number 102585, dated June 6, 2002, which held that Texas Transportation Code, §548.256(c) and (d) were unconstitutional.

[(b) Duration. This rule is effective from September 1, 2001 until August 30, 2008.]

(b) [(e)] Vehicle inspection stations shall perform the [a] vehicle identification number (VIN) verification on all vehicles brought into the state prior to registration by persons other than manufacturers or importers. The [This] vehicle identification number verification shall only be performed after the vehicle has passed the compulsory state safety inspection, to include emissions testing if the inspection station is in an affected [a designated] county as defined in §23.93 of this title [relating to Vehicle Emissions Inspection Requirements].

(c) [(d)] During the verification a certified inspector shall record the complete vehicle identification number exactly as it appears on the vehicle. The VIN number will not be taken from any title, [old] registration or any other document. If the vehicle identification number is missing, obscured or mutilated, the verification form will be completed showing "NONE", "OBSCURED", or "MUTILATED" in the blanks provided for the vehicle identification number. In addition to the vehicle identification number, the information listed below shall be recorded on the verification form.

(1) The number appearing on the odometer of the vehicle at the time of the inspection, if the vehicle has an odometer. In the event the vehicle has no odometer, then "NONE" shall be recorded in the blank provided on the form.

(2) The model year of the vehicle inspected.

(3) The make of the vehicle inspected.

(4) The body style of the vehicle inspected.

(5) If previously registered in another state, the state or country in which the vehicle was last registered to include:

(A) the year of the license where last licensed, and

(B) the license number where last licensed, or

(C) "NPR" (no previous registration).

[(e)] Inspection stations shall collect the Texas Emissions Reduction Plan Fund Fee of \$225 for all vehicle identification number (VIN) verifications performed except where the vehicle owner is exempt. Exempt vehicle owners are officers, enlisted persons, selectees, or draftees of the Army, Army Reserve, Army National Guard, Air National Guard, Air Force, Air Force Reserve, Navy, Navy Reserve,

Marine Corps, Marine Corps Reserve, Coast Guard, or Coast Guard Reserve of the United States; and the spouse and children of such officers, enlisted persons, selectees, or draftees. Proof of exemption will be provided by presentation of a valid and current Department of Defense Identification (ID) Card for Members of the Uniformed Services, their Dependents, and Other Eligible Individuals: DD Form 2 (all versions), DD Form 1173 (all versions), DD Form 4 (Enlistment/Reenlistment Document Armed Forces Of The United States), DD Form 47 (Record Of Induction), or a letter signed by the individual's commanding officer or designate. A copy of this documentation must be provided to the inspection station for retention.]

(d) [(f)] The Vehicle Identification Number verification shall be recorded on a form as designated by the department. This form is a governmental record as defined by Texas Penal Code, §37.01[one of two different forms. The appropriate form, form handling instructions, and appropriate fees are explained below].

[(1) Form VI 30. This form shall be used for all vehicle identification number (VIN) verifications except where the vehicle owner is exempt from the payment of the Texas Emissions Reduction Plan Fee.]

[(A) Inspection stations shall collect \$225 for each VI 30 completed. This fee is in addition to any other vehicle inspection fee, including emissions testing, and can not be waived. The inspection station may retain \$5 of this fee for administrative costs and remit the remainder to the department as provided in subparagraph (C)(i) of this paragraph.]

[(B) Form VI 30 is provided by the department to inspection stations in a triplicate form. The certified vehicle inspector shall complete the VI 30 to include all information included in subsection (d) of this section.]

[(C) The disposition of completed VI 30 forms are as follows:]

[(i) The original, or top page, of the VI 30 will be forwarded to the department together with the state's portion of the fees collected for the Texas Emissions Reduction Plan Fund. On the final business day, every week, inspection stations shall send all completed VI 30 forms from the preceding week with a completed negotiable check, cashier's or drawn on a station account, or money order in an amount equal to \$220 for each completed form. Inspection stations shall mail both the completed VI 30 forms and a check or money order in an appropriate sized envelope to: Department of Public Safety, Attn: Central Cash Receiving, P.O. Box 149246, Austin, TX 78714. Corporate, or other similar business associations which operate multiple inspection stations which are geographically separated and operate with central accounting departments may be waived from submitting collections weekly. The multiple station operator must request this waiver from the department (Manager, Vehicle Inspections & Emissions, P.O. Box 4087, Austin, TX 78773-0543). This request must provide for a suitable alternative payment schedule acceptable to the department.]

[(ii) The first copy, or second page, of the VI 30 will be presented to the driver of the vehicle for use in registering and titling the vehicle.]

[(iii) The second copy, or last page of the VI 30 certificate will be retained in the certificate book by the inspection station and be subject to audit by department personnel.]

[(2) Form VI 30A. This form shall be used for all vehicle identification number (VIN) verifications where the vehicle owner is exempt from the payment of the Texas Emissions Reduction Plan Fee.]

(1) ~~[(A)]~~ Inspection stations may collect a fee of ~~[shall collect]~~ \$1.00 for each out-of-state VIN verification [VI 30A] completed. This fee is in addition to any other vehicle inspection fee, including emissions testing, but this fee may be waived. The inspection station retains this fee to cover its administrative costs.

(2) ~~[(B)]~~ The form used for the out-of-state VIN verification [Form VI 30A] is provided by the department to inspection stations in a duplicate form.

(3) ~~[(C)]~~ The disposition of completed out-of-state VIN verification form is ~~[VI 30A forms are]~~ as follows:

(A) ~~[(i)]~~ The original~~[-]~~ or top page, of the out-of-state VIN verification form [VI 30A] will be presented to the driver of the vehicle. The completed form is a certificate to verify the vehicle's VIN for use in registering and titling the vehicle.

(B) ~~[(ii)]~~ The copy, or last page of the form ~~[VI 30A]~~ will be retained by the inspection station~~[-]~~ along with a copy of the vehicle owner's proof of exemption and be subject to audit by department personnel.

(c) ~~[(g)]~~ The verification form [Forms VI 30 and VI 30A] shall be completed by the certified inspector performing the vehicle identification number verification, using a permanent marking pen or type-writer and following the instructions contained in the "Rules and Regulations Manual for Official Vehicle Inspection Stations and Certified Inspectors". The certified inspector will not sign the identification certificate until all required entries ~~[blanks]~~ have been completed. The certified inspector shall insure that each carbon copy of this form is legible.

(f) ~~[(h)]~~ If any error is made while recording any of the information required on the ~~[either the Form VI 30 or Form VI 30A]~~ certificate, VOID the form and fill out another certificate with the correct information. Inspection stations shall keep all copies of all voided forms.

(g) ~~[(i)]~~ Failure to comply with this or other sections concerning the issuance and safeguarding of out-of-state vehicle identification verification certificates~~[-]~~ collection of the Texas Emissions Reduction Plan Fund Fee, or remittance of the fee to the state shall result in adverse administration action by the department under 37 TAC §23.15 of this title (relating to Inspection Station and Certified Inspector Denial, Revocation, Suspensions, and Administrative Hearings) which may result in the ~~[immediate]~~ suspension ~~[and]~~ or revocation of the certification of the station and/or inspector, in addition to any criminal prosecution as provided by Texas Penal Code, §37.10.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2005.

TRD-200500974

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: April 17, 2005

For further information, please call: (512) 424-2135



SUBCHAPTER G. VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM 37 TAC §23.93

The Texas Department of Public Safety proposes amendments to §23.93, concerning Vehicle Emissions Inspections Requirements. This section defines commonly used terms, provides for control procedures, testing waivers and extensions, prohibitions, recognition requirements for recognized emissions repair technicians and recognized repair facilities, requirements for certified emissions inspection stations and inspectors, audit authority, and the adoption of department manuals for operation of certified emissions inspection stations.

The primary reason for this proposal is the adoption by the Texas Commission on Environmental Quality (TCEQ) of 30 TAC §§114.80 - 114.87, and corresponding revisions to the Texas Inspection and Maintenance State Implementation Plan (Texas I/M SIP), adopted on November 17, 2004, and published in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11348).

The significant amendments expand the vehicle emissions inspection program to Travis and Williamson counties as one of the measures of the Austin area Early Action Compact (EAC) clean air action plan, approved by TCEQ, in accordance with Senate Bill 1159, 78th Legislature, 2003. Effective September 1, 2005, department certified inspection stations in the two counties must perform on-board diagnostic (OBD) inspections and two-speed idle (TSI) inspections on vehicles subject to emissions testing during the annual safety inspection. In facilitating program operation, this proposal will require all inspection stations in the two counties to obtain emissions testing equipment certified by TCEQ. The department will also implement and administer programs for recognized repair facilities and technicians specializing in emissions repair in the two counties. The proposal includes amendments preparing for the conditional suspension of the vehicle emissions inspection program in El Paso County in the event it is designated as reaching attainment, minor textual corrections, and reflects changes in statutes concerning registration.

Oscar Ybarra, Chief of Finance, has determined that during the first year of the first five-year period the proposed section is in effect, there will be significant fiscal implications to state or local governments as a result of the enforcement of this section. This determination is based on an analysis of the fiscal impact of the TCEQ's proposal as stated in the July 30, 2004, issue of the *Texas Register* (29 TexReg 7259) pages 7263-7264. The department's proposal in itself will not add any additional fiscal implications, but will result in the enforcement of the measures adopted by the TCEQ. In summary, approximately 41 government stations perform safety inspections of their vehicle fleets. During the first year, one quarter of an estimated government fleet of 2,514 vehicles will be inspected. This number is estimated to increase to 2,829 vehicles in the fifth year, based on 3% increase per annum. Governments continuing to perform inspections must purchase the necessary test equipment and services. Continued in-house inspections will necessitate obtaining an emissions analyzer with an estimated cost of \$15,000 per machine, for a first year initial cost of approximately \$615,000. Each analyzer must have a dedicated telephone line with an estimated annual cost of \$360 and data transmission costs of \$0.78 for each emissions inspection. Government outsourcing of inspection of vehicle fleets will result in fiscal implications not fully captured in the TCEQ proposal. While inspection fees are the subject of another rule proposal by the department, the fiscal impacts of fees are more appropriately addressed here. Safety inspection certificates cost stations, including government stations, \$5.50 for all state collected fees. With additional fees under the TCEQ

rule, the safety and emissions certificate costs stations \$10.00. During annual vehicle inspection, the safety and emissions inspections are performed sequentially as one inspection, with the exception of commercial vehicles and vehicles submitted for on-road emissions testing verification. Outsourcing inspection of government vehicles will cost the retail price of \$28.50, instead of \$16.00 as projected by TCEQ. During the first year, the cost of outsourcing is estimated to be \$23,883(\$13,408), increasing to \$73,786 in the second and full year of testing and projected to increase to \$80,627(\$45,272) in the fifth year (numbers following in parenthesis are those stated by TCEQ). Over a five-year period, the inspection cost of outsourcing inspections is estimated to cost \$332,567. This amount does not include repair cost calculations, which were based on a 10% failure rate, and estimated repair costs of \$480 per each failing vehicle.

Mr. Ybarra has determined there will be no significant fiscal implications to small and micro-businesses. He concurs with the TCEQ fiscal analysis in this area. Small businesses owning subject vehicles are required, as are other owners, to have the vehicle emissions tested annually and pay an additional fee (\$16.00) Those small businesses (approximately 300) engaged in the business of state vehicle inspections must choose to make the same expenditures as government inspections stations, but in return realize a revenue increase of \$11.50 per inspection.

Mr. Ybarra also has determined that for each year of the first five-year period the section as proposed will be in effect, the public benefit anticipated as a result of enforcing the rule will be compliance with measures contained in the Austin area Early Action Compact (EAC) clean air action plan and the costs for a five-year period are generally as estimated by TCEQ, or as much as \$192.7 million.

Comments on the proposal may be submitted to E. Eugene Summerford, Legal Counsel, Vehicle Inspections and Emissions, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0543; or by fax at (512) 424-2774. All comments must be received no later than 30 days after publication in the *Texas Register* and should reference "Proposed Rule 37 TAC 23.93" in the subject line or in the beginning of the text.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.301(b-1), which authorizes the commission to adopt rules establishing a motor vehicle emissions inspection and maintenance program for vehicles subject to an early action compact.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.301(b-1) are affected by this proposal.

§23.93. Vehicle Emissions Inspection Requirements.

(a) General. [The rules of the Texas Department of Public Safety set out herein are to maintain compliance with the Texas Clean Air Act.] The department is authorized to establish and implement a vehicle emissions testing program as as [that is] a part of the annual vehicle safety inspection program, in accordance with Texas Transportation Code, Chapter 548 and [the] Health and Safety Code, Chapter 382 [and rules adopted thereunder].

(b) Terms and/or Definitions. Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Department of Public Safety (DPS), the terms used by the DPS have the meanings commonly ascribed to them in the fields of air pollution control and vehicle inspection. In addition to the terms defined by the TCAA,

the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Affected county--refers to any county with a motor vehicle emissions inspection and maintenance program under Texas Transportation Code, §548.301 and Health and Safety Code, §382.202 and §382.302 [~~§382.037~~]. The Texas Commission on Environmental Quality (TCEQ) specifies these counties in 30 TAC §114.50 and §114.80.

(2) - (8) (No change.)

(9) Exempt vehicles--refers to vehicles otherwise considered "designated vehicles" that are:

(A) exhibition vehicles, such as antique vehicles, as defined by Texas Transportation Code, §504.502 [~~502.275~~];

(B) - (C) (No change.)

(10) - (33) (No change.)

(c) Applicability. The requirements of this section and those contained in the Revised Texas I/M SIP shall apply [~~be applied~~] to motorists, vehicles, vehicle inspection stations and inspectors certified by the department to inspect vehicles, and to Recognized Emissions Repair Facilities of Texas and Recognized Emissions Repair Technicians of Texas, as defined herein.

(d) Control requirements.

(1) In affected counties, in order to be certified by the department as a vehicle inspection station, the vehicle inspection station must be certified by the department to perform vehicle emissions testing. This provision does not apply to vehicle inspection stations certified by the department as vehicle inspection stations endorsed only to issue one or more of the following inspection certificates: trailer certificates, motorcycle certificates, commercial motor vehicle windshield certificates, or commercial trailer certificates.

(2) In affected counties, only department certified inspection stations [~~that are~~] certified by the department to do emissions testing may perform the annual vehicle safety inspection on designated vehicles.

(3) An inspection station in a county not designated as an affected county shall not inspect a designated vehicle unless the inspection station is certified by the department to perform emissions testing, or unless the motorist presenting the vehicle signs an affidavit on a form provided by the department stating the vehicle is excepted from emissions testing. The affidavit will be held by the inspection station for collection by the department. Under the following exceptions, a vehicle registered in an affected county may receive a safety inspection at an inspection station in a non-affected county.

(A) (No change.)

(B) The vehicle no longer qualifies as a designated vehicle because it [is] no longer and will be no longer primarily operated in an affected county. For example, the vehicle registration indicates it is registered in an affected county, but the owner has moved, does not currently reside in, nor will primarily operate the vehicle in an affected county.

(C) (No change.)

(4) - (5) (No change.)

(6) Any vehicle not listed as an exempt vehicle that is capable of being powered by gasoline, from two years old to and including 24 years old, presented for the annual vehicle safety inspection in affected counties will be presumed to be a designated vehicle and will

be emissions tested as a part of the annual vehicle safety inspection. Emissions testing will be conducted as follows:

(A) in all affected counties, except Travis, Williamson, and El Paso counties [~~County~~]:

(i) - (iii) (No change.)

(B) This subparagraph applies to all designated vehicles in Travis and Williamson counties.

(i) All 1996 model year and newer designated vehicles, which are equipped with an On-board diagnostic system, will be emission tested using approved OBD I/M test equipment.

(ii) All 1995 model year and older designated vehicles will be emissions tested using approved two-speed idle I/M test equipment (TSI).

(iii) As specified by the department, OBD vehicles which can not be tested using the prescribed emission testing equipment will be tested using the approved two-speed idle I/M test equipment (TSI).

(C) [~~(B)~~] This subparagraph applies to all designated vehicles in El Paso County.

(i) All designated vehicles will be emissions tested using approved two-speed idle I/M test equipment (TSI).

(ii) In the event [~~that~~] the Texas Commission on Environmental Quality publishes notification in the *Texas Register* that contingency I/M measures in El Paso County are necessary, the following requirements become effective 12 months after the notice is published.

(I) All 1996 model year and newer designated vehicles, which are equipped with an On-board diagnostic system, will be emission tested using approved OBD I/M test equipment.

(II) All 1995 model year and older designated vehicles will be emissions tested using approved two-speed idle I/M test equipment (TSI).

(III) OBD vehicles which can not be tested using the prescribed emission testing equipment will be tested using the approved two-speed idle I/M test equipment (TSI).

(iii) In the event, the Texas Commission on Environmental Quality publishes notification in the *Texas Register* suspending I/M measures in El Paso County, the related requirements of this rule applicable to that county shall be suspended.

(7) Vehicles registered in affected counties will be identified by a distinguishing validation registration sticker or a registration sticker imprinted with the name of the [~~affected~~] county, as determined by the Texas Department of Transportation.

(8) - (16) (No change.)

(17) Emissions testing of vehicles requiring vehicle identification insignias issued by public institutes of higher learning. Effective January 1, 2002 as per §51.207 of the Texas Education Code, public institutions of higher learning located in affected counties may [~~will~~] require vehicles to be emissions tested as a condition to receive a permit to park or drive on the grounds of the institution, including vehicles registered out-of-state. The following instructions are provided for handling this type of inspection.

(A) - (B) (No change.)

(e) Waivers and extensions. Under this section, the department may issue an emissions testing waiver or time extension to any

vehicle that passes all requirements of the standard safety inspection portion of the annual vehicle safety inspection and meets the established criteria for a particular waiver or time extension. An emissions testing waiver or a time extension defers the need for full compliance with vehicle emissions standards of the vehicle emissions I/M program for a specified period of time after a vehicle fails an emissions test. The department will accept applications for emissions testing waivers and time extensions. There are four types of emissions testing waivers and time extensions: Low Mileage Waiver; Individual Vehicle Waiver; Parts Availability Time Extension; and Low-Income Time Extension. The motorist may apply once each testing cycle for the Low Mileage Waiver, Individual Vehicle Waiver, and Parts Availability Time Extension. The motorist may apply every other testing cycle for the Low-Income Time Extension.

(1) (No change.)

(2) Low-Income Time Extension. A Low-Income Time Extension may be granted in accordance with the following conditions:

(A) The applicant must supply to the department proof in writing that:

(i) - (iii) (No change.)

(iv) the applicant receives financial assistance from the Texas Health and Human Services Commission or the Department of Aging and Disability Services [~~Texas Department of Human Services~~] due to indigence (subject to approval by the director) or the applicant's adjusted gross income (if the applicant is married, the applicant's adjusted gross income is equal to the applicant's adjusted gross income plus the applicant's spouse's adjusted gross income) is at or below the current federal poverty level as published by the United States Department of Health and Human Services, Office of the Secretary, in the Federal Register; proof shall be in the form of a federal income tax return or other documentation authorized by the director that the applicant certifies as true and correct.

(B) (No change.)

(3) (No change.)

(4) Individual Vehicle Waiver.

(A) Eligibility. If a vehicle has failed an emissions test required by the vehicle emissions I/M program, a motorist may petition the designated representative of the department for an Individual Vehicle Waiver in order for the vehicle to receive a state inspection certificate. The motorist must demonstrate that all reasonable measures (diagnostics, repairs, replacement parts, etc.) have been taken to bring the vehicle into compliance with the program, but have failed. The department will review the measures taken by the motorist to insure that they have been performed, further measures would be economically unfeasible during this inspection cycle, and a waiver will result in a minimal impact on air quality. A vehicle may be eligible for an [~~a~~] Individual Vehicle Waiver provided that:

(i) (No change.)

(ii) the motorist has incurred qualified emissions-related repairs, as defined by subsection [~~subparagraph~~] (e)(1)(B) of this section, costing equal to or are in excess of the maximum reasonable repair expenditure amounts, as defined herein for the county in which the vehicle is registered.

(B) - (D) (No change.)

(f) - (h) (No change.)

(i) Requirements for Recognized Emissions Repair Facilities of Texas.

(1) In order to be recognized by the department as a Recognized Emissions Repair Facility of Texas, the facility must:

(A) (No change.)

(B) possess equipment to perform the functionality of the following items:

(i) - (v) (No change.)

(vi) five gas exhaust analyzer (which can perform diagnostic repair for at least hydrocarbon (HC), carbon monoxide (CO), carbon dioxide (CO₂), and oxides of nitrogen (NO_x), except for those in Travis, Williamson, and El Paso counties which require a four gas exhaust analyzer (which can perform diagnostic repair for at least hydrocarbon (HC), carbon monoxide (CO), and carbon dioxide (CO₂);

(vii) - (xv) (No change.)

(2) - (3) (No change.)

(j) Certified emissions inspection station requirements.

(1) In order to be certified by the department as an emissions inspection station, for purposes of the emissions I/M program, the station must:

(A) - (F) (No change.)

(G) All public certified emissions inspection stations in affected counties, excluding Travis, Williamson, and El Paso counties [County] shall offer both the ASM-2 test and the OBD test. Certified emissions inspection stations in these affected counties desiring to offer OBD-only emission testing to the public must request a waiver as low volume emissions inspection station from the department Regional Supervisor. All public certified emissions inspection stations in Travis and Williamson counties shall offer both the OBD and TSI test. All public certified emissions inspection stations in El Paso County shall offer the TSI test. Effective 12 months after TCEQ notification published in the Texas Register, all public certified emissions inspection stations in El Paso County shall offer both and the OBD and TSI test.

(2) (No change.)

(k) - (n) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2005.

TRD-200500976

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: April 17, 2005

For further information, please call: (512) 424-2135



CHAPTER 27. CRIME RECORDS

SUBCHAPTER A. REVIEW OF PERSONAL CRIMINAL HISTORY RECORD

37 TAC §27.1

The Texas Department of Public Safety proposes an amendment to §27.1, concerning Right of Review. Amendment to the section is necessary in order to set out the new location in Austin where

an individual may personally appear to request the individual's criminal history record.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be notice to the public of the location where an individual may appear to request criminal history record information relating to oneself. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Jeffrey Carothers, Crime Records Service Staff Attorney, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0230, (512) 424-5835.

The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.086, which requires the Texas Department of Public Safety to adopt rules that provide for a uniform method of requesting criminal history record information from the department; and Texas Government Code, §411.083(b)(3), which requires the Texas Department of Public Safety to grant access to criminal history record information to the person who is the subject of the information.

Texas Government Code, §§411.004(3), 411.086 and 411.083(b)(3) are affected by this proposal.

§27.1. Right of Review.

(a) (No change.)

(b) A person may personally appear at the department's headquarters in Austin during normal business hours and request the person's criminal history record information as follows:

(1) The person must submit a signed, written request to the Assistant Chief of Administration, Crime Records Service, or his/her designee[,] located at Texas Department of Public Safety, Criminal History and Fingerprint Services, 108 Denson Drive [5805 North Lamar Boulevard, Building G], Austin, Texas 78752 [78765].

(2) - (3) (No change.)

(4) Upon receipt of a request described by this subsection and the required fee, the department will conduct a fingerprint based search of the Texas Computerized Criminal History Database. If criminal history record information relating to the person is located, the department will provide the person with a printout of the information. If criminal history record information relating to the person is not located, a notation of such fact will be made on the fingerprint card and the fingerprint card will be returned to the person. The department will provide the person with the results of the search at Texas Department of Public Safety, Criminal History and Fingerprint Services, 108 Denson Drive, Austin, Texas 78752[the department's headquarters] on the next business day after the day the department receives the request.

(c) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2005.

TRD-200500971
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: April 17, 2005
For further information, please call: (512) 424-2135



PART 3. TEXAS YOUTH COMMISSION

CHAPTER 95. YOUTH DISCIPLINE

SUBCHAPTER A. DISCIPLINARY PRACTICES

37 TAC §95.3

The Texas Youth Commission (the commission) proposes an amendment to §95.3, concerning Rules of Conduct. The amendment to the section will allow possession of lighters or matches in a residential placement to be considered as a weapon and be determined as a Category I rule violation.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amended section will enable the commission to provide a safe environment for youth and staff. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. No private real property rights are affected by adoption of this amendment.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or e-mail to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its function.

The proposed amendment implements the Human Resources Code, §61.034.

§95.3. *Rules of Conduct.*

(a) - (e) (No change.)

(f) Category I Rule Violations. A Category I ~~[category I]~~ rule violation is an act of misconduct that constitutes a crime, involves harm to the youth or others, or threatens facility safety, security, and order. These are the baseline rules which, when crossed, result in the most severe consequences. These consequences include referral to criminal court, disciplinary movement, reclassification, multi-phase demotion, and/or assignment of a disciplinary minimum length of stay. Category I rule violations are as follows:

(1) - (12) (No change.)

(13) Possession of a Weapon--youth is found to be in possession of a weapon or item(s) which ~~[can be used as a weapon, or]~~

has been made, or adapted for use as a weapon. This includes cigarette lighters or matches in a residential placement.

(14) - (27) (No change.)

(g) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2005.

TRD-200500962
Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: April 17, 2005
For further information, please call: (512) 424-6301



CHAPTER 97. SECURITY AND CONTROL

SUBCHAPTER A. SECURITY AND CONTROL

37 TAC §97.10

The Texas Youth Commission (the commission) proposes an amendment to §97.10, concerning Entry Searches. The amendment to the section will prohibit metal containers from entering in to the commission's secure facilities.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will increase the security on maximum security facilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its function.

The proposed rule implements the Human Resources Code, §61.034.

§97.10. *Entry Searches.*

(a) - (i) (No change.)

(j) The following items are prohibited in secure facilities except with specific permission from the facility administrator:

(1) - (6) (No change.)

(7) Metal containers;

(8) [~~(7)~~] Glass containers;

(9) [(8)] Personal tools;

(10) [(9)] Personal cellular phones;

(11) [(10)] Cameras or video equipment;

(12) [(11)] Contraband as defined in §97.11 of this title (relating to Control of Unauthorized Items Seized); or

(13) [(12)] Any other item perceived by searching staff to be dangerous. The item will be referred to the superintendent or designee for consideration.

(k) - (o) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2005.

TRD-200500931

Dwight Harris

Executive Director

Texas Youth Commission

Earliest possible date of adoption: April 17, 2005

For further information, please call: (512) 424-6301



PART 11. TEXAS JUVENILE PROBATION COMMISSION

CHAPTER 343. STANDARDS FOR SECURE JUVENILE PRE-ADJUDICATION DETENTION AND POST-ADJUDICATION CORRECTIONAL FACILITIES

SUBCHAPTER B. PRE-ADJUDICATION AND POST-ADJUDICATION SECURE FACILITY STANDARDS

37 TAC §343.15

The Texas Juvenile Probation Commission proposes an amendment to §343.15, concerning the employment of certified detention officers. The amendment is being proposed in an effort to alleviate problems associated with employing certified officers who have been convicted of a Class B misdemeanor.

Lisa Capers, Deputy Executive Director and General Counsel, has determined that for the first five year period the amendment is in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcement or implementation.

Ms. Capers has also determined that for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcement or implementation will be to allow more flexibility in the consideration of prior criminal history information in the certification decision. There will be no impact on small businesses or individuals as a result of the amendment.

Public comments on the proposed amendment may be submitted to Kristy M. Almager at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547.

The amendment is proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by the amendment.

§343.15. *Employment of Certified Juvenile Detention Officers.*

(a) - (b) (No change.)

(c) Disqualification from Employment.

(1) Criminal History. A person with the following criminal history shall be disqualified from employment as a certified juvenile detention officer, supervisor of juvenile detention officers, or facility administrator:

(A) - (G) (No change.)

(H) Waiver/Variance. A waiver or variance under §349.2 of this title may not be requested for this section for any Class A misdemeanor or felony unless the person received a pardon based upon proof of innocence or the reversal of a finding of guilt by a trial or appellate court.

(2) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200500968

Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Earliest possible date of adoption: April 17, 2005

For further information, please call: (512) 424-6710



CHAPTER 349. GENERAL ADMINISTRATIVE STANDARDS

SUBCHAPTER C. CERTIFICATION AND RECERTIFICATION

37 TAC §349.7, §349.10

The Texas Juvenile Probation Commission proposes amendments to §349.7 and §349.10, concerning the employment certification and recertification eligibility. The amendments are being proposed in an effort to alleviate problems associated with employing certified officers who have been convicted of a Class B misdemeanor.

Lisa Capers, Deputy Executive Director and General Counsel, has determined that for the first five year period the amendments are in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcement or implementation.

Ms. Capers has also determined that for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcement or implementation will be to allow more flexibility in the consideration of prior criminal history information in the certification decision. There will be no impact on small business or individuals as a result of the amendments.

Public comments on the proposed amendments may be submitted to Kristy M. Almager at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547.

The amendments are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by these amendments.

§349.7. Certification Eligibility.

(a) Basic Eligibility Requirements.

(1) (No change.)

(2) A request for waiver or variance may not be requested for any disqualifying criminal history under paragraph (1)(B) of this subsection involving a Class A misdemeanor or felony unless the person received a pardon based upon proof of innocence or the reversal of a finding of guilt by either the trial or an appellate court.

(b) - (c) (No change.)

§349.10. Recertification Eligibility.

(a) Basic Eligibility Requirements.

(1) (No change.)

(2) A request for waiver or variance may not be requested for any disqualifying criminal history under paragraph [subsection (a)](1)(A) of this subsection involving any Class A or felony [section] unless the person received a pardon based upon proof of innocence or the reversal of a finding of guilt by either the trial or an appellate court.[;]

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200500969

Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

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For further information, please call: (512) 424-6710



CHAPTER 351. STANDARDS FOR SHORT-TERM DETENTION FACILITIES

SUBCHAPTER C. SHORT-TERM JUVENILE DETENTION OFFICERS

37 TAC §351.30

The Texas Juvenile Probation Commission proposes an amendment to §351.30, concerning the employment of short-term juvenile detention officers. The amendment is being proposed in an effort to alleviate problems associated with employing certified officers who have been convicted of a Class B misdemeanor.

Lisa Capers, Deputy Executive Director and General Counsel, has determined that for the first five year period the amendment is in effect, there will be no fiscal implications for state or local

government or small businesses as a result of enforcement or implementation.

Ms. Capers has also determined that for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcement or implementation will be to allow more flexibility in the consideration of prior criminal history information in the certification decision. There will be no impact on small business or individuals as a result of the amendment.

Public comments on the proposed amendment may be submitted to Kristy M. Almager at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547.

The amendment is proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by the amendment.

§351.30. Employment of Short-Term Juvenile Detention Officers.

(a) - (b) (No change.)

(c) Disqualification from Employment.

(1) Criminal History. A person with the following criminal history shall be disqualified from employment as a short-term juvenile detention officer, supervisor of juvenile detention officers, or administrative officer.

(A) - (G) (No change.)

(H) Waiver/Variance. A request for waiver or variance under §349.2 of this title may not be requested for any Class A misdemeanor or felony under this section unless the person received a pardon based upon proof of innocence or the reversal of a finding of guilt by a trial or appellate court.

(2) (No change.)

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200500970

Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

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For further information, please call: (512) 424-6710



PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 421. STANDARDS FOR CERTIFICATION

37 TAC §421.7

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Fire Protection or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission on Fire Protection (TCFP) proposes the repeal of §421.7, concerning recognition of previous volunteer training, in Chapter 421, entitled Standards for Certification. The purpose of the proposed repeal is to delete an obsolete rule addressing a situation that no longer exists.

In 1997, a statutory change conformed the volunteer fire fighter program to be consistent with the paid fire fighter program. The repealed rule relates to training obtained prior to 1992 under the previous volunteer program. This rule is no longer applicable and should be deleted.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the proposed repeal is in effect there will be no significant fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be greater clarity of the commission's rules regarding previous volunteer training and simplification of the rules by deleting obsolete provisions. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed repeal.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments must be received within 30 days of publication of this proposal in the *Texas Register*.

The repeal is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.029, which provides the TCFP with the authority to establish minimum curriculum requirements for training facilities.

Texas Government Code, §419.008 and §419.029, are affected by this rulemaking.

§421.7. Recognition of Previous Volunteer Training.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 7, 2005.

TRD-200501009

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 239-4921



CHAPTER 423. FIRE SUPPRESSION

The Texas Commission on Fire Protection (TCFP) proposes amendments to §423.203 and §423.303, concerning minimum standards for basic aircraft rescue fire fighting personnel certification and basic marine fire protection personnel certification, in Chapter 423, entitled Fire Suppression. The purpose of the proposed amendments is to delete obsolete and redundant language referencing hours of instruction requirements for out-of-state or military training programs submitted to the commission to determine equivalency for certification.

The amendments are proposed in conjunction with amendments to Chapters 421, 427, 429, 431, 433, 439, and 453 of this title, which are proposed concurrently in this issue of the *Texas Register*. These amendments remove the references to required hours of instruction in the text of the affected rules. The intent of this change is to move towards an emphasis on competency-based outcomes, measured by physical skills evaluation and written testing, rather than reliance on a specific number of hours of instruction, to assure student competency at the completion of fire fighter training. Upon adoption of these rules, equivalency of hours will no longer be relevant as a specified number of hours will no longer be required.

The TCFP has determined these amendments to be in compliance with Texas Government Code, §419.022(b).

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the proposed amendments are in effect there will be no significant fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be greater clarity and consistency in the process for measuring results of fire fighter training in the state, thereby assuring better-trained fire protection personnel. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed amendments.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments must be received within 30 days of publication of these proposals in the *Texas Register*.

SUBCHAPTER B. MINIMUM STANDARDS FOR AIRCRAFT RESCUE FIRE FIGHTING PERSONNEL

37 TAC §423.203

The amendments are proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.029, which provides the TCFP with the authority to establish minimum curriculum requirements for training facilities.

Texas Government Code, §§419.008, 419.022, and 419.029 are affected by this rulemaking.

§423.203. Minimum Standards for Basic Aircraft Rescue Fire Fighting Personnel Certification.

(a) (No change.)

[(b) Out-of-state or military training programs which are submitted to the commission for the purpose of determining equivalency will be considered equivalent if the subjects taught, subject content, hours of training in each subject, and total hours of training meet or exceed the requirements set forth in Chapter 2 (pertaining to Basic Aircraft Rescue Fire Protection) of the commission's Certification Curriculum Manual.]

[e] A person who holds or is eligible to hold a certificate upon employment as a part-time aircraft rescue firefighter may be certified as an aircraft rescue fire fighting personnel, of the same level

of certification, without meeting the applicable examination requirements.

(c) ~~[(d)]~~ If a person holds a current certification as a part-time aircraft rescue firefighter, the Texas Department of Health emergency care attendant certification may be satisfied by documentation of equivalent training or certification in lieu of current certification by the Texas Department of Health.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 7, 2005.

TRD-200501010

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 239-4921



SUBCHAPTER C. MINIMUM STANDARDS FOR MARINE FIRE PROTECTION PERSONNEL

37 TAC §423.303

The amendments are proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.029, which provides the TCFP with the authority to establish minimum curriculum requirements for training facilities.

Texas Government Code, §§419.008, 419.022, and 419.029 are affected by this rulemaking.

§423.303. Minimum Standards For Basic Marine Fire Protection Personnel Certification.

~~[(a) Training programs that are intended to satisfy the requirements for Basic Marine Fire Protection Personnel certification, must meet the curriculum, competencies, and hour requirements of this subchapter. All applicants for certification must meet the examination requirements of this section.]~~

~~[(a) [(b)] In order to obtain basic Marine Fire Protection Personnel certification the individual must:~~

~~(1) hold basic structure fire protection personnel certification;~~

~~(2) complete a training program specific to marine fire protection consisting of one of the following:~~

~~(A) complete the commission approved Basic Marine Fire Protection Curriculum as specified in Chapter 3, of the commission's Certification Curriculum Manual, as approved by the commission in accordance with Chapter 443 of this title, relating to Certification Curriculum Manual. The commission approved marine fire protection curriculum must be taught by a training facility that has been certified by the commission as provided in Chapter 427 of this title (relating to Training Facility Certification); or~~

~~(B) an out-of-state training program that has been submitted to the commission for evaluation and found to be equivalent to~~

or exceed the commission approved Basic Marine Fire Protection Curriculum; or

~~(C) a military training program that has been submitted to the commission for evaluation and found to be equivalent to the commission approved Basic Marine Fire Protection Curriculum.~~

~~(3) successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification) prior to assignment.~~

~~[(e) Out-of-state or military training programs which are submitted to the commission for the purpose of determining equivalency will be considered equivalent if the subjects taught, subject content, hours of training in each subject, and total hours of training meet or exceed the requirements set forth in Chapter 3 (pertaining to Marine Fire Protection) of the commission's Certification Curriculum Manual.]~~

~~[(b) [(d)] A person who holds or is eligible to hold a certificate upon employment as a part-time marine fire protection personnel may be certified as a marine fire protection personnel, of the same level of certification, without meeting the applicable examination requirements.~~

~~(c) [(e)] If a person holds a current certification as a part-time marine fire protection personnel, the Texas Department of Health emergency care attendant certification may be satisfied by documentation of equivalent training or certification in lieu of current certification by the Texas Department of Health.~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gary L. Warren, Sr.

Executive Director

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For further information, please call: (512) 239-4921



CHAPTER 425. FIRE INSTRUCTORS

The Texas Commission on Fire Protection (TCFP) proposes the repeal of existing Chapter 425, entitled Fire Instructor, and new Chapter 425, entitled Fire Service Instructors. Existing Chapter 425 is comprised of §§425.1, 425.3, 425.5, 425.7, 425.9, 425.201, 425.203, 425.205, 425.207, 425.209, 425.301, and 425.401. Proposed new Chapter 425 consists of new §§425.1, 425.3, 425.5, 425.7, 425.9, 425.11, and 425.12, concerning minimum standards for certification as a Fire Service Instructor, Fire Service Instructor I, Fire Service Instructor II, Fire Service Instructor III, Master Fire Service Instructor III, and Associate Instructor, and International Fire Service Accreditation Congress (IFSAC) seals for fire service instructors. The effective date of new Chapter 425 and the repeal of existing Chapter 425 will be March 1, 2006. The purpose of the repeal of existing Chapter 425 is to provide for a restructuring of the instructor certification rules into a new chapter with the following changes in organization and requirements: certification categories have been redesignated with new titles; Fire Education Specialist requirements have been deleted as a separate subchapter, and have been incorporated into the various levels of Fire Service Instructor certification requirements; the existing requirement of completion of

an approved "Methods of Teaching" course has been replaced in the new chapter with a requirement of completion of the curriculums for Fire Service Instructor I and II, with the exception of those individuals with degrees in education.

The new chapter provides that training programs for fire service instructor certification that are started on or after March 1, 2006 must meet the curriculum and competencies based on NFPA 1041. Upon adoption current instructors certificates will have existing certificates renewed at the appropriate new certification level.

New §425.1, Minimum Standards for Fire Service Instructor, provides guidelines regarding the effective date of the rule, standards for equivalency determinations regarding training, and requirements related to education, training, certifications held, and requirements for continuing education.

New §425.3, Minimum Standards for Fire Service Instructor I Certification, provides requirements regarding experience, education, and testing for Instructor I certification.

New §425.5, Minimum Standards for Fire Service Instructor II Certification, provides requirements regarding prior certifications held, and education and testing for Instructor II certification.

New §425.7, Minimum Standards for Fire Service Instructor III certification, provides requirements regarding prior certifications held, education, and testing for Instructor III certification.

New §425.9, Minimum Standards for Master Fire Service Instructor III Certification, provides requirements regarding prior certifications held, and experience for Master Fire Service Instructor III certification.

New §425.11, Minimum Standards for Associate Instructor Certification, provides limitations and requirements on issuance of the Associate Instructor certification.

New §425.12, International Fire Service Accreditation Congress Seal, provides the requirements and limitations on issuance and use of the seal.

The TCFP has determined these amendments to be in compliance with Texas Government Code §419.022(b).

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the proposed repeals and new rules are in effect there will be no significant fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed repeals and new rules are in effect, the public benefit anticipated as a result of enforcing the repeals and new rules will be the assurance that fire service instructors in the state are trained to the highest standards. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed repeals and new rules.

Comments on the proposals may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments must be received within 30 days of publication of these proposals in the *Texas Register*.

SUBCHAPTER A. FIRE SERVICE INSTRUCTOR CERTIFICATION

37 TAC §§425.1, 425.3, 425.5, 425.7, 425.9

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Fire Protection or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.028(3), which provides the TCFP with the authority to certify persons as qualified fire protection personnel instructors under conditions which the TCFP prescribes.

Texas Government Code, §§419.008, 419.022, and 419.028 are affected by this rulemaking.

§425.1. *Minimum Standards for Fire Service Instructor Certification.*

§425.3. *Minimum Standards for Basic Fire Service Instructor Certification.*

§425.5. *Minimum Standards for Intermediate Fire Service Instructor Certification.*

§425.7. *Minimum Standards for Advanced Fire Service Instructor Certification.*

§425.9. *Minimum Standards for Master Fire Service Instructor Certification.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 7, 2005.

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Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 239-4921



SUBCHAPTER B. FIRE EDUCATION SPECIALIST CERTIFICATION

37 TAC §§425.201, 425.203, 425.205, 425.207, 425.209

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Fire Protection or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.028(3), which provides the TCFP with the authority to certify persons as qualified fire protection personnel instructors under conditions which the TCFP prescribes.

Texas Government Code, §§419.008, 419.022, and 419.028 are affected by this rulemaking.

§425.201. *Minimum Standards for Fire Education Specialist Certification.*

§425.203. *Minimum Standards for Basic Fire Education Specialist Certification.*

§425.205. *Minimum Standards for Intermediate Fire Education Specialist Certification.*

§425.207. *Minimum Standards for Advanced Fire Education Specialist Certification.*

§425.209. *Minimum Standards for Master Fire Education Specialist Certification.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 239-4921



SUBCHAPTER C. ASSOCIATE INSTRUCTOR CERTIFICATION

37 TAC §425.301

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Fire Protection or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.028(3), which provides the TCFP with the authority to certify persons as qualified fire protection personnel instructors under conditions which the TCFP prescribes.

Texas Government Code, §§419.008, 419.022, and 419.028 are affected by this rulemaking.

§425.301. *Minimum Standards for Associate Instructor Certification.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 239-4921



SUBCHAPTER D. INSTRUCTOR TRAINING COURSES

37 TAC §425.401

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Fire Protection or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.028(3), which provides the TCFP with the authority to certify persons as qualified fire protection personnel instructors under conditions which the TCFP prescribes.

Texas Government Code, §§419.008, 419.022, and 419.028 are affected by this rulemaking.

§425.401. *Instructor Training Courses.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 239-4921



CHAPTER 425. FIRE SERVICE INSTRUCTORS

37 TAC §§425.1, 425.3, 425.5, 425.7, 425.9, 425.11, 425.12

The new rules are proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.028(3), which provides the TCFP with the authority to certify persons as qualified fire protection personnel instructors under conditions which the TCFP prescribes.

Texas Government Code, §§419.008, 419.022, and 419.028 are affected by this rulemaking.

§425.1. *Minimum Standards for Fire Service Instructor Certification.*

(a) The effective date of this chapter shall be 03/01/2006. Training programs that are intended to satisfy the requirements for fire service instructor certification that are started on or after the effective date of this chapter must meet the curriculum and competencies based upon NFPA 1041. All applicants for certification must meet the examination requirements of this section, except for associate instructors.

(b) Prior to being appointed to fire service instructor duties, all personnel must complete a commission approved fire service instructor program and successfully pass the commission examination pertaining to that curriculum, except for associate instructors.

(c) An out-of-state, military, or federal instructor training program may be accepted by the commission as meeting the training and experience requirements for certification as a fire service instructor if

the training has been submitted to the commission for evaluation and found to be equivalent to or to exceed the commission-approved instructor course for that particular level of fire service instructor certification.

(d) A bachelors degree or higher in education or a teaching certificate is considered equivalent to the commission's curriculum requirements for instructor I, II and III training.

(e) Individuals who hold basic fire service instructor or basic fire education specialist certification on the effective date of this chapter will, upon renewal, be renewed as a fire service instructor I.

(f) Individuals who hold intermediate fire service instructor or intermediate fire education specialist certification on the effective date of this chapter will, upon renewal, be renewed as a fire service instructor II.

(g) Individuals who hold advanced fire service instructor or advanced fire education specialist certification on the effective date of this chapter will, upon renewal, be renewed as a fire service instructor III.

(h) Individuals who hold master fire service instructor or master fire education specialist certification on the effective date of this chapter will, upon renewal, be renewed as a master fire service instructor III.

(i) Personnel holding any level of fire service instructor certification must comply with the continuing education requirements specified in §441.21 of this title (relating to Continuing Education for Fire Service Instructors).

§425.3. Minimum Standards for Fire Service Instructor I Certification.

(a) In order to become certified as a fire service instructor I an individual must:

(1) have a minimum of three years experience in fire protection in one or more or any combination of the following:

(A) a paid, volunteer, or regulated non-governmental fire department; or

(B) a department of a state agency, education institution or political subdivision providing fire protection training and related responsibilities; and

(2) have completed the appropriate curriculum for Fire Service Instructor I contained in Chapter 8 of the commission's Certification Curriculum Manual, or meet the equivalence as specified in §425.1(d) of this title; and

(3) successfully pass the applicable commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification).

(b) In order to qualify for the fire service instructor I examination the individual must meet the years of experience and training requirements as outlined in this section.

§425.5. Minimum Standards for Fire Service Instructor II Certification.

In order to become certified as a fire service instructor II, an individual must:

(1) hold Instructor I certification, complete the appropriate curriculum for Fire Service Instructor II contained in Chapter 8 of the commission's Certification Curriculum Manual, or meet the equivalence as specified in §425.1(d) of this title; and

(2) successfully pass the applicable commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification).

§425.7. Minimum Standards for Fire Service Instructor III Certification.

In order to become certified as a fire service instructor III an individual must:

(1) hold Instructor II certification, complete the appropriate curriculum for Fire Service Instructor III contained in Chapter 8 of the commission's Certification Curriculum Manual, or meet the equivalence as specified in §425.1(d) of this title; and

(2) successfully pass the applicable commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification).

§425.9. Minimum Standards for Master Fire Service Instructor III Certification.

In order to become certified as a master fire service instructor III the individual must:

(1) hold as a prerequisite a fire service instructor III certification;

(2) hold as a prerequisite a master structural fire protection personnel certification, a master aircraft rescue fire fighting personnel certification, master marine fire protection personnel certification, master inspector certification, master fire investigator certification or master arson investigator certification; and

(3) be a member of a paid, volunteer, or regulated non-governmental fire department.

§425.11. Minimum Standards for Associate Instructor Certification.

(a) The Associate Instructor certificate is designed for an individual that is not:

(1) fire protection personnel; or

(2) volunteer fire protection personnel; or

(3) an employee of a state agency, an educational institution or a political subdivision providing fire protection training.

(b) In order to be certified as an Associate Instructor an individual must have successfully completed the appropriate curriculum for Fire Service Instructor I and II contained in Chapter 8 of the commission's Certification Curriculum Manual, with the following exception: a bachelors degree or higher in education or a teaching certificate is considered equivalent to the commission's curriculum requirements for instructor II training.

§425.12. International Fire Service Accreditation Congress Seal.

(a) Individuals who hold basic fire service instructor or basic fire education specialist certification prior to the effective date of this chapter may be granted an IFSAC seal for Instructor I by making application to the commission and paying the applicable fee.

(b) Individuals who hold intermediate fire service instructor, intermediate fire education specialist, or associate instructor certification prior to the effective date of this chapter may be granted an IFSAC seal for Instructor II by making application to the commission and paying the applicable fee.

(c) Individuals who hold advanced or master fire service instructor, or advanced or master fire education specialist certification prior to the effective date of this chapter may be granted an IFSAC seal

for Instructor III by making application to the commission and paying the applicable fee.

(d) Individuals completing a commission-approved Fire Service Instructor I training program, and passing the applicable state examination may be granted an IFSAC seal for Instructor I by making application to the commission and paying the applicable fee.

(e) Individuals holding an IFSAC Instructor I certification, completing a commission-approved Fire Service Instructor II training program, and passing the applicable state examination may be granted an IFSAC seal for Instructor II by making application to the commission and paying the applicable fee.

(f) Individuals holding an IFSAC Instructor II certification, completing a commission-approved Fire Service Instructor III training program, and passing the applicable state examination may be granted an IFSAC seal for Instructor III by making application to the commission and paying the applicable fee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gary L. Warren, Sr.

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For further information, please call: (512) 239-4921



CHAPTER 427. TRAINING FACILITY CERTIFICATION

The Texas Commission on Fire Protection (TCFP) proposes amendments to §§427.1, 427.3, 427.5, 427.9, 427.11, 427.15, 427.17, 427.19, 427.201, 427.203, 427.205, 427.207, and 427.209, and new §427.18, concerning requirements for on-site training providers, including a new rule regarding live fire training evolutions, and requirements for distance training providers, in Chapter 427, entitled Certified Training Providers. The purpose of the proposed amendments and new rule is to align TCFP rules with National Fire Protection Association Standard 1403 regarding requirements for certified training facilities conducting fire protection personnel training in the state.

The proposed amendment to §427.1, Minimum Standards for Certified Training Facilities for Fire Protection Personnel: adds requirements that facilities include standard operating procedures and qualified instructors; requires that letters of commitment be maintained on-site and be available for review; provides that approved courses are subject to audit; requires reporting of deviations from approved course schedule or content; and places additional duties upon the academy coordinator. The proposed amendment to §427.3, Facilities: provides grammatical changes; adds requirements for an effective learning environment; and deletes references to other provisions and standards.

The proposed amendment to §427.5, Apparatus, adds the words "certification training" for clarification, and adds a requirement for facilities approved for hazardous materials technician certification training. The proposed amendment to §427.9, Equipment,

adds requirements for use of self-contained breathing apparatus. The proposed amendment to §427.11, Reference Material, requires that the reference library be readily and easily accessible to students and instructors. The proposed amendment to §427.15, Testing Procedures, changes "subchapter" to "title" to reflect the proper citation, changes "required" to "recommended" with regard to hours of training, and requires that a passing score of 70% must be achieved on the comprehensive final. The proposed amendment to §427.17, Staff, clarifies that the requirements in subsection (f) apply to coordinators or instructors who do not meet the requirements of subsections (b) or (d).

New §427.18, Live Fire Training Evolutions, provides requirements for all live fire training evolutions conducted during basic certification training of fire protection personnel.

The proposed amendment to §427.19, General Information, clarifies what changes in status require notification, and provides that a certification of a training facility may be revoked, suspended, or probated if the facility fails to meet at least a 70% student pass rate on the state certification exam per course.

The proposed amendment to §427.201, Minimum Standards for Distance Training Provider: requires that distance training (internet or intranet) include some level of interactivity; requires that approved courses are subject to audit; requires reporting of deviations from approved course schedule or content; places additional duties upon the academy coordinator; and provides that distance training facilities comply with Subchapter A of this chapter.

The proposed amendment to §427.203, Records, is a clerical correction. The proposed amendment to §427.205, Testing Procedures, changes "required" to "recommended" with regard to hours of training, and requires that a passing score of 70% must be achieved on the comprehensive final. The proposed amendment to §427.207, Staff, clarifies that the requirements in subsection (f) apply to coordinators or instructors who do not meet the requirements of subsections (b) or (d). The proposed amendment to §427.209, General Information, provides that a certification of a training facility may be revoked, suspended, or probated if the facility fails to meet at least a 70% student pass rate on the state certification exam per course.

The TCFP has determined these amendments to be in compliance with Texas Government Code, §419.022(b).

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the proposed amendments and new rule are in effect there will be no significant fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed amendments and new rule are in effect, the public benefit anticipated as a result of enforcing the amendments and new rule will be a safer environment during live fire training exercises offered by certified training providers in the state (both on-site and distance training providers) and a more clear submittal and approval process for approved certification training. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed amendments and new rule.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to

info@tcfp.state.tx.us. Comments must be received within 30 days of publication of these proposals in the *Texas Register*.

SUBCHAPTER A. ON-SITE CERTIFIED TRAINING PROVIDER

37 TAC §§427.1, 427.3, 427.5, 427.9, 427.11, 427.15, 427.17 - 427.19

The amendments and new rule are proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.029, which provides the TCFP with the authority to establish minimum curriculum requirements for training facilities.

Texas Government Code, §§419.008, 419.022, and 419.029 are affected by this rulemaking.

§427.1. Minimum Standards for [On-Site] Certified Training Facilities for Fire Protection Personnel.

(a) - (b) (No change.)

(c) Minimum requirements for certification as a certified on-site training facility shall include facilities, apparatus, equipment, reference materials, standard operating procedures, qualified instructors, and records to support a quality education and training program. The resources must provide for classroom instruction, demonstrations, and practical exercises for the trainees to develop the knowledge and skills required for fire protection personnel certification.

(d) - (e) (No change.)

(f) An organization, installation, or facility must submit a written application for certification as a certified on-site training facility to the commission. Such application will include descriptions and addresses of physical facilities together with inventory of apparatus, equipment, and reference material to be utilized in conducting the basic curriculum as specified by the commission. It is not required that the equipment be owned by, permanently assigned to, nor kept at a training facility, but must be readily available for instructional purposes. A training facility must submit a letter of commitment with the original training facility certification application authorizing the use of resources not controlled by the training facility from the provider of said resources. A copy of the letters of commitment must be maintained on-site and be available for review. Photographs of resources annotated to reflect their identity must be included with the application. When seeking training [basic course] approvals, the facility shall certify that the resources are provided in accordance with this chapter.

(g) All training for certification must be submitted to the commission for approval at least 20 days prior to the proposed starting date of the training. Approved courses are subject to audit by commission staff any time during the approved schedule. Any deviation in the approved course schedule or content must be reported to the commission within 24 hours of the deviation. The academy coordinator will:

(1) attest to the fact that the training meets the competencies in the applicable Commission Curriculum and/or NFPA Standards;

(2) submit a testing schedule for all required academy skills; and

(3) notify the Commission of any changes in instructor staff and/or field examiners.

(h) (No change.)

§427.3. Facilities.

The following minimum resources, applicable to the curricula, are required for certification as a certified on-site training facility. These facilities may be combined or separated utilizing one or more structures. In either event the facilities must be available and used by the instructor and trainees.

(1) A training tower equivalent to two or more stories in height. The term "training tower" as used in these standards is a structure suitable for training in the practical application of required ladder, rescue, hose and rope skills training [ladder evolutions, rescue drills, hose advancement, and rope work].

(2) A facility for classroom instruction and testing shall have seating capacity for anticipated trainees. The facility must be conducive for an effective learning environment including environmental comfort for instructors and students, physical requirements needed for good seeing and hearing, adequate lighting, and free of outside distractions.

(3) An area [Area] for practical application of principles and procedures of fire fighting, hose loading, pumper operation, to include friction loss, nozzle reaction, fire stream patterns, and GPM discharge utilizing various layouts for hand lines and/or [and] master stream appliances.

(4) (No change.)

(5) A structure suitable for interior live fire training and meeting the requirements of the basic curriculum pertaining to the particular discipline(s) which the training facility is approved to teach, shall be available for use by the instructors to teach interior live fire training.

~~[(A) NFPA 1403, Standard on Live Fire Training Evolutions in Structures shall be used as a guide when conducting live fire training.]~~

~~[(B) A Personal Alert Safety System (PASS) shall be provided for all students and instructors participating in live fire training and shall meet the requirements in §435.9 of this title (relating to PASS devices). Section 435.9 applies whether the PASS is provided by the academy or the trainee.]~~

~~[(C) A Personnel Accountability System that complies with §435.13 of this title shall be utilized.]~~

~~[(D) The facility shall utilize an Incident Management System that complies with §§435.11, 435.15 and 435.17 of this title during live fire training.]~~

(6) - (7) (No change.)

§427.5. Apparatus.

(a) Certified on-site training facility--approved for basic structural fire protection personnel certification training.

(1) - (2) (No change.)

(b) Certified on-site training facility--approved for basic aircraft rescue fire fighting personnel certification training. Fire apparatus that is equipped to perform aircraft operations as required by the basic aircraft fire protection curriculum must be readily available for use by the instructors for instructional purposes.

(c) Certified on-site training facility--approved for Driver/Operator-Pumper certification training. A piece of fire apparatus with a permanently mounted fire pump that has a rated discharge capacity of 750 gpm (2850 L/min) or greater as defined in NFPA 1901, Standard for Automotive Fire Apparatus.

(d) Certified on-site training facility approved for hazardous materials technician certification training must have access to props and/or simulators, protective suits and monitoring equipment required for skills training and testing.

§427.9. *Equipment.*

The following minimum equipment, applicable to the curricula the training facility is certified to teach, is required for certification as a certified on-site ~~[on site]~~ training facility. The equipment must be available for use by the certified training facility:

(1) If instruction in the use of self-contained breathing apparatus is a part of the curriculum being taught, then self-contained breathing apparatus in sufficient numbers shall be provided to enable each trainee to wear the equipment for at least the life of one breathing air tank during the training. If during the course of the training, a trainee will be subjected to a hazardous atmosphere or where the atmosphere is unknown, the trainee shall be provided with a self-contained breathing apparatus. (Note: All self-contained breathing apparatus used by a certified training facility and the air used in self-contained breathing apparatus ~~[them]~~ must comply with §435.3 of this title (relating to Self-Contained Breathing Apparatus)). This rule applies whether the self-contained breathing apparatus is provided by the academy or the trainee. All students, instructors, safety personnel, and other personnel participating in any evolution or operation of fire suppression during the live fire training shall breathe from an SCBA air supply whenever operating under one or more of the following conditions:[:]

(A) in any atmosphere that is oxygen deficient or contaminated by products of combustion, or both;

(B) in any atmosphere that is suspected of being oxygen deficient or contaminated by products of combustion, or both;

(C) in any atmosphere that can become oxygen deficient or contaminated, or both; and/or

(D) below ground level;

(2) - (3) (No change.)

§427.11. *Reference Material.*

A reference library is required. The library must contain the publications required to conduct research and develop lesson plans covering the material required in the applicable curriculum. The reference library material must be readily and easily accessible to students and instructors.

§427.15. *Testing Procedures.*

(a) - (b) (No change.)

(c) If performance skills are part of the applicable curriculum, performance testing shall be done and records kept in accordance with §427.13 of this title ~~[subchapter]~~. This will ensure that each trainee has demonstrated an ability to competently and carefully perform, individually and as a member of a team, all tasks and operations associated with the training.

(d) (No change.)

(e) Periodic written tests shall be administered at the ratio of one test per 50 hours of recommended ~~[required]~~ training, or portion thereof. In addition to periodic tests, a comprehensive final test must be administered. ~~[A passing score shall be 70%-]~~ If a course is taught in phases, one comprehensive final test shall be administered at the completion of all phases. A passing score of 70% must be achieved on the comprehensive final.

(f) (No change.)

§427.17. *Staff.*

(a) - (e) (No change.)

(f) The on-site coordinator or lead instructor for the fire officer training courses only, who do not meet the requirements of subsection (b) or (d) of this section shall as a minimum, possess an associate instructor certification and a minimum of a bachelor's degree in management or its ~~[the]~~ equivalent.

§427.18. *Live Fire Training Evolutions.*

The most current edition of NFPA 1403, Standard on Live Fire Training Evolutions, shall be used as a guide when developing standard operating procedures for conducting live fire training. The following requirements shall apply for all live fire training evolutions conducted during basic certification training of fire protection personnel.

(1) Prior to being permitted to participate in live fire training evolutions, the student shall have received training to meet the performance requirements for Fire Fighting I in NFPA 1001, Standard for Fire Fighter Professional Qualifications, related to the following subjects:

- (A) Safety;
- (B) Fire behavior;
- (C) Portable extinguishers;
- (D) Personal protective equipment;
- (E) Ladders;
- (F) Fire hose, appliances, and streams;
- (G) Overhaul;
- (H) Water supply;
- (I) Ventilation; and
- (J) Forcible entry.

(2) The on-site lead instructor will insure that the water supply rate and duration for each individual live fire training evolution is adequate to control and extinguishment of the training fire, the supply necessary for backup lines to protect personnel, and any water needed to protect exposed property.

(3) The on-site lead instructor will insure that the buildings or props being utilized for live fire training are in a condition that would not pose an undue safety risk.

(4) A safety officer shall be appointed for all live fire training evolutions. The safety officer shall have the authority, regardless of rank, to intervene and control any aspect of the operations when, in his or her judgment, a potential or actual danger, accident, or unsafe condition exists. The safety officer shall not be assigned other duties that interfere with safety responsibilities. The safety officer shall not be a student.

(5) No person(s) shall play the role of a victim inside the building.

(6) The participating student-to-instructor ratio shall not be greater than five to one.

(7) Prior to the ignition of any fire, instructors shall insure that all personal protective clothing and/or self-contained breathing apparatus are NFPA compliant and being worn in the proper manner.

(8) Prior to conducting any live fire training a pre-burn briefing session shall be conducted. All participants shall be required to conduct a walk-through of the structure in order to have a knowledge

of and familiarity with the layout of the building and to be able to facilitate any necessary evacuation of the building.

(9) A standard operating procedure shall be developed and utilized for live fire training evolutions. The standard operating procedure shall include but not be limited to:

(A) a Personal Alert Safety System (PASS). A PASS device shall be provided for all students and instructors participating in live fire training and shall meet the requirements in §435.9 of this title (relating to PASS devices). This applies whether the PASS device is provided by the academy or the trainee;

(B) a Personnel Accountability System that complies with §435.13 of this title shall be utilized;

(C) an Incident Management System;

(D) use of personal protective clothing and self-contained breathing apparatus;

(E) an evacuation signal and procedure; and

(F) pre-burn, burn and post-burn procedures.

§427.19. General Information.

(a) - (e) (No change.)

(f) The commission shall be notified, in writing, within 14 days of any change from the original status under which the certification was issued [in the certified training].

(g) The commission may revoke, suspend, and/or probate the certification of a training facility when the commission determines that the training facility:

(1) Fails to provide the quality of training for which the facility was approved; or

(2) (No change.)

(3) Fails to submit required reports in a timely manner or submits false reports to the commission; or [-]

(4) Fails to meet at least a 70 percent student pass rate on the state certification examination per course.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER B. DISTANCE TRAINING PROVIDER

37 TAC §§427.201, 427.203, 427.205, 427.207, 427.209

The amendments are proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.029, which provides the TCFP with the authority to establish minimum curriculum requirements for training facilities.

Cross reference to statute: Texas Government Code, §419.008 and §419.029.

§427.201. Minimum Standards for Distance Training Provider.

(a) The following definition is applicable to this subchapter only. Approved distance training is defined as fire training where instructors and students are primarily in different locations and ~~or where~~ content is instructed primarily using the internet or an intranet and courses must contain some level of interactivity ~~[correspondence, video technology, audio technology, or computer-mediated delivery]~~. Distance training that serves as nothing more than electronic text is not acceptable. Online courses must provide the opportunity for the student to interact or ask questions via e-mail, chat rooms or some other method of communication. Other computer-mediated methods of instruction may be used to enhance instruction; however, the primary delivery method must be through the internet or an intranet.

(b) - (c) (No change.)

(d) All training for certification must be submitted to the commission for approval at least 20 days prior to the proposed starting date of the training. Approved courses are subject to audit by commission staff any time during the approved schedule. Any deviation in the approved course schedule or content must be reported to the commission within 24 hours of the deviation. The academy coordinator will:

(1) attest to the fact that the training meets the competencies in the applicable Commission Curriculum and/or NFPA Standards;

(2) submit a testing schedule for all required academy skills periodic or final for Structure, Hazardous Materials, Driver/Operator-Pumper, and Aircraft Rescue Fire Protection; and

(3) notify the Commission of any changes in instructor staff and/or field examiners.

(e) A distance training provider that applies for certification as a training facility in a discipline that includes skills training shall comply with Subchapter A of this chapter concerning minimum standards, facilities, apparatus, protective clothing, equipment, and live fire training utilized to teach and test the required skills.

(f) ~~[(e)]~~ A distance training provider certified for the first time by the commission will receive, at no charge, one Commission Certification Curriculum and Standards Manual on CD to be utilized by the certified distance training provider's instructors. The distance training provider is responsible for ensuring that all subjects are taught as required by the curricula. Additional CD copies may be purchased from the commission or downloaded from the agency web site. Distance training providers that renew their certification will receive appropriate updates at no charge.

§427.203. Records.

(a) Training records shall be maintained by the distance training provider that reflect:

(1) Who was trained, subject, instructor, and date of instruction. (Note: Individual records are required rather than class records); [and]

(2) Individual trainee test scores to include performance testing; and [-]

(3) (No change.)

(b) - (c) (No change.)

§427.205. Testing Procedures.

(a) - (d) (No change.)

(e) Periodic written tests shall be administered at the ratio of one test per 50 hours of recommended ~~[required]~~ training, or portion

thereof. In addition to periodic tests, a comprehensive final test must be administered. ~~[A passing score shall be 70%.]~~ If a course is taught in phases, one comprehensive final test shall be administered at the completion of all phases. A passing score of 70% must be achieved on the comprehensive final.

(f) (No change.)

§427.207. *Staff.*

(a) - (e) (No change.)

(f) The distance training coordinator or lead instructor for fire officer training courses only, who do not meet the requirements of subsection (b) or (d) of this section shall as a minimum, possess an associate instructor certification and a minimum of a bachelors degree in management or its equivalent.

§427.209. *General Information.*

(a) - (e) (No change.)

(f) The commission may revoke, suspend, and/or probate the certification of training when the commission determines that the distance training provider:

(1) Fails to provide the quality of training and education for which the provider was approved; or

(2) (No change.)

(3) Fails to submit required reports in a timely manner or submits false reports to the commission; or [-]

(4) Fails to meet at least a 70 percent student pass rate on the state certification examination per course.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 429. MINIMUM STANDARDS FOR FIRE INSPECTORS

The Texas Commission on Fire Protection (TCFP) proposes amendments to §429.3 and §429.203, concerning minimum standards for basic fire inspector certification and minimum standards for basic fire inspector certification (new track), in Chapter 429, entitled Minimum Standards for Fire Inspectors. The purpose of the amendments is to reflect the move on the part of the TCFP from requirements of specific hours of instruction to competency-based outcomes, and to clarify course requirements.

The proposed amendments to §429.3 and §429.203 delete obsolete language referencing hours of instruction requirements for training programs; and the proposed amendment to §429.3 changes the training program requirement beyond the basic course and Fire Inspection Principles I from any combination of five courses (specifically - Fire Prevention Specialist II;

Plans Review for Inspectors; Code Management: A Systems Approach; Management of Fire Prevention Programs; and Strategic Analysis of Fire Prevention Programs) to a requirement that two of the courses must be completed.

The amendments are proposed in conjunction with amendments to Chapters 421, 423, 427, 431, 433, 439, and 453 of this title, which are proposed concurrently in this issue of the *Texas Register*. These amendments remove the references to required hours of instruction in the text of the affected rules. The intent of this change is to move towards an emphasis on competency-based outcomes, measured by physical skills evaluation and written testing, rather than reliance on a specific number of hours of instruction, to assure student competency at the completion of fire fighter training.

The TCFP has determined these amendments to be in compliance with Texas Government Code, §419.022(b).

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the proposed amendments are in effect there will be no significant fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be greater clarity and consistency in the process for measuring results of fire fighter training in the state, thereby assuring better-trained fire protection personnel. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed amendments.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments must be received within 30 days of publication of these proposals in the *Texas Register*.

SUBCHAPTER A. MINIMUM STANDARDS FOR FIRE INSPECTOR CERTIFICATION BASED ON REQUIREMENTS IN EFFECT PRIOR TO JANUARY 1, 2005

37 TAC §429.3

The amendments are proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.029, which provides the TCFP with the authority to establish minimum curriculum requirements for training facilities.

Texas Government Code, §§419.008, 419.022, and 419.029 are affected by this rulemaking.

§429.3. *Minimum Standards for Basic Fire Inspector Certification.*

~~{(a) Training programs that are intended to satisfy the requirements of this section must meet the curriculum, competencies, and hour requirements of this section. All applicants for certification must meet the examination requirements of this section.}~~

(a) [(b)] In order to be certified by the commission as a Basic Fire Inspector an individual must complete a commission approved fire inspection training program and successfully pass the commission

examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved basic fire inspection training program shall consist of one or any combination of the following:

(1) completion of the commission approved Basic Fire Inspector Curriculum, dated prior to January 1, 2005; or

(2) successful completion of an out-of-state training program which has been submitted to the commission for evaluation and found to meet the minimum requirements as listed in the commission approved Basic Fire Inspector Curriculum as specified in Chapter 4 of the commission's Certification Curriculum Manual; or

(3) successful completion of the following college courses: Fundamentals of Fire Protection, 3 semester hours; Fire Protection Systems, 3 semester hours; Fire Prevention, 3 semester hours; Building Code, 3 semester hours; Building Construction, 3 semester hours; Hazardous Materials, 3 semester hours; Fundamentals of Speech, 3 semester hours; Total semester hours, 21*. *NOTE: Building Code and Building Construction may be combined into a single three semester hour class. If this is the case, the total semester hours may be reduced to 18. Hazardous Materials I or II may be used to satisfy the requirements of Hazardous Materials; or

(4) successful completion of a [~~minimum of 226 hours of instruction in a~~] National Fire Academy program for fire inspection. The program must include the basic course, Fire Inspection Principles I, and two [~~any combination~~] of the following courses or their [~~its~~] predecessor:

- (A) Fire Prevention Specialist II; or
- (B) Plans Review for Inspectors; or
- (C) Code Management: A Systems Approach; or
- (D) Management of Fire Prevention Programs; or
- (E) Strategic Analysis of Fire Prevention Programs.

(b) [~~(e)~~] National Fire Academy courses [~~of equal or greater class hours~~] that replace a course discontinued by the National Fire Academy may be used towards requirements for certification in place of the discontinued course.

(c) [~~(d)~~] A person who holds or is eligible to hold a certificate upon employment as a part-time fire inspector may be certified as a fire inspector, of the same level of certification, without meeting the applicable examination requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INSPECTOR CERTIFICATION

37 TAC §429.203

The amendments are proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.029, which provides the TCFP with the authority to establish minimum curriculum requirements for training facilities.

Texas Government Code, §§419.008, 419.022, and 419.029 are affected by this rulemaking.

§429.203. *Minimum Standards for Basic Fire Inspector Certification--New Track.*

(a) (No change.)

(b) National Fire Academy courses [~~of equal or greater class hours~~] that replace a course discontinued by the National Fire Academy may be used towards requirements for certification in place of the discontinued course.

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 431. FIRE INVESTIGATION

The Texas Commission on Fire Protection (TCFP) proposes amendments to §§431.3, 431.5, 431.7, and 431.203, concerning minimum standards for arson investigator certification and minimum standards for fire investigator certification, in Chapter 431, entitled Fire Investigation. The purpose of the proposed amendments is to reflect the move on the part of TCFP away from requirements of specific hours of instruction to competency-based outcomes, to clarify course requirements, and to correct clerical errors.

The proposed amendments to §431.3 and §431.203 delete language referencing hours of instruction requirements for training programs; and change the training program requirement beyond the basic course and Fire Inspection Principles I from any combination of five courses (specifically - Fire Prevention Specialist II; Plans Review for Inspectors; Code Management: A Systems Approach; Management of Fire Prevention Programs; and Strategic Analysis of Fire Prevention Programs) to a requirement that two of the courses must be completed.

The amendments to §431.3 and §431.203 are proposed in conjunction with amendments to Chapters 421, 423, 427, 429, 433, 439, and 453 of this title, which are proposed concurrently in this issue of the *Texas Register*. These amendments remove the references to required hours of instruction in the text of the affected rules. The intent of this change is to move towards an emphasis on competency-based outcomes, measured by physical skills evaluation and written testing, rather than reliance on a specific

number of hours of instruction, to assure student competency at the completion of fire fighter training.

The proposed amendments to §431.5 and §431.7 correct the same clerical error in each rule - the reference to subsection (d) is corrected to subsection (c), and are not connected with the group of amendments to rules listed in the previous paragraph.

The TCFP has determined these amendments to be in compliance with Texas Government Code, §419.022(b).

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the proposed amendments are in effect there will be no significant fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be greater clarity and consistency in the process for measuring results of fire fighter training in the state, thereby assuring better-trained fire protection personnel. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed amendments.

Comments on the proposals may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments must be received within 30 days of publication of these proposals in the *Texas Register*.

SUBCHAPTER A. MINIMUM STANDARDS FOR ARSON INVESTIGATOR CERTIFICATION

37 TAC §§431.3, 431.5, 431.7

The amendments are proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.029, which provides the TCFP with the authority to establish minimum curriculum requirements for training facilities.

Texas Government Code, §§419.008, 419.022, and 419.029 are affected by this rulemaking.

§431.3. *Minimum Standards for Basic Arson Investigator Certification.*

(a) In order to be certified by the commission as a Basic Arson Investigator an individual must:

(1) - (3) (No change.)

(4) complete a commission approved basic fire investigation training program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved fire investigation training program shall consist of one of the following:

(A) (No change.)

(B) successful completion of [a ~~minimum of 128 hours of instruction in~~ a National Fire Academy program for fire investigation. The program must include the basic course, Fire Arson Investigation, and two [any combination] of the following courses or their predecessor:

(i) - (iv) (No change.)

(C) - (D) (No change.)

(b) (No change.)

§431.5. *Minimum Standards for Intermediate Arson Investigator Certification.*

(a) Applicants for Intermediate Arson Investigator Certification must complete the following requirements:

(1) (No change.)

(2) acquire a minimum of four years of fire protection experience and complete the requirements listed in one of the following options:

(A) - (C) (No change.)

(D) Option 4--Hold current Intermediate Peace Officer certification from the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) with four additional law enforcement courses applicable for fire investigations. (See exception outlined in subsection (c) [(d)] of this section.)

(b) - (c) (No change.)

§431.7. *Minimum Standards for Advanced Arson Investigator Certification.*

(a) Applicants for Advanced Arson Investigator certification must complete the following requirements:

(1) (No change.)

(2) acquire a minimum of eight years of fire protection experience and complete the requirements listed in one of the following options:

(A) - (D) (No change.)

(E) Option 5--Hold current Advanced Peace Officer certification from the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) with four additional law enforcement courses applicable for fire investigations. (See exception outlined in subsection (c) [(d)] of this section.)

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 239-4921



SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INVESTIGATOR CERTIFICATION

37 TAC §431.203

The amendment is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.029, which provides the TCFP with the authority to establish minimum curriculum requirements for training facilities.

Texas Government Code, §§419.008, 419.022, and 419.029 are affected by this rulemaking.

§431.203. Minimum Standards for Fire Investigator Certification.

~~[(a)]~~ Training programs that are intended to satisfy the requirements of this section must meet the curriculum, competencies, and hour requirements of this section. All applicants for certification must meet the examination requirements of this section.]

(a) ~~[(b)]~~ In order to be certified by the commission as a Fire Investigator an individual must complete the requirements specified in §431.3(a)(3) or (4) of this title.

(b) ~~[(e)]~~ A person who holds or is eligible to hold a certificate upon employment as a part-time fire investigator may be certified as a full-time fire investigator without meeting the applicable examination requirements.

(c) ~~[(d)]~~ A person who holds or is eligible to hold a certificate as a Fire Investigator may be certified as an Arson Investigator by meeting the requirements of Chapter 431, Subchapter A, but shall not be required to repeat the applicable examination requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 433. MINIMUM STANDARDS FOR DRIVER/OPERATOR-PUMPER

37 TAC §433.3

The Texas Commission on Fire Protection (TCFP) proposes an amendment to §433.3, concerning minimum standards for driver/operator-pumper certification, in Chapter 433, entitled Minimum Standards for Driver/Operator-Pumper. The purpose of the proposed amendment is to delete obsolete language referencing hours of instruction requirements for training programs.

The amendment to §433.3 is proposed in conjunction with amendments to Chapters 421, 423, 427, 429, 431, 439, and 453, which are proposed concurrently in this issue of the *Texas Register*. This amendment removes the references to required hours of instruction in the text of the affected rules. The intent of this change is to move towards an emphasis on competency-based outcomes, measured by physical skills evaluation and written testing, rather than reliance on a specific number of hours of instruction, to assure student competency at the completion of fire fighter training.

The TCFP has determined these amendments to be in compliance with Texas Government Code, §419.022(b).

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the proposed amendment is in effect there will be no significant fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be greater clarity and consistency in the process for measuring results of fire fighter training in the state, thereby assuring better-trained fire protection personnel. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed amendment.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments must be received within 30 days of publication of this proposal in the *Texas Register*.

The amendment is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.029, which provides the TCFP with the authority to establish minimum curriculum requirements for training facilities.

Texas Government Code, §§419.008, 419.022, and 419.029 are affected by this rulemaking.

§433.3. Minimum Standards for Driver/Operator-Pumper Certification.

(a) In order to obtain Driver/Operator-Pumper certification the individual must:

(1) - (2) (No change.)

(3) complete a commission approved Driver/Operator-Pumper Curriculum and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved driver/operator-pumper program must consist of one of the following:

(A) complete a commission approved Driver/Operator-Pumper Curriculum [of at least 40 hours] as specified in Chapter 7 of the commission's Certification Curriculum Manual.

(B) - (C) (No change.)

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 439. EXAMINATIONS FOR CERTIFICATION

SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING

37 TAC §§439.5, 439.15, 439.17

The Texas Commission on Fire Protection (TCFP) proposes amendments to §§439.5, 439.15, and 439.17, concerning procedures for conducting written and/or performance examinations, testing for certification status, and the number of test questions, in Chapter 439, entitled Examinations for Certification. The purpose of the amendments is to reflect the move on the part of TCFP from requirements of specific hours of instruction to competency-based outcomes, and to make minor changes in terminology.

The amendments to §439.5 and §439.17 are proposed in conjunction with amendments to Chapters 421, 427, 429, 431, 433, and 453, which are proposed concurrently in this issue of the *Texas Register*. These amendments remove the references to required hours of instruction in the text of the affected rules. The intent of this change is to move towards an emphasis on competency-based outcomes, measured by physical skills evaluation and written testing, rather than reliance on a specific number of hours of instruction, to assure student competency at the completion of fire fighter training. The amendment to §439.15 replaces the word "assignment" with the word "appointment" to provide consistency with other rule provisions.

The TCFP has determined these amendments to be in compliance with Texas Government Code, §419.022(b).

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the proposed amendments are in effect there will be no significant fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be greater clarity and consistency in the process for measuring results of fire fighter training in the state, thereby assuring better-trained fire protection personnel. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed amendments.

Comments on the proposals may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments must be received within 30 days of publication of these proposals in the *Texas Register*.

The amendments are proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.029, which provides the TCFP with the authority to establish minimum curriculum requirements for training facilities.

Texas Government Code, §§419.008, 419.022, and 419.029 are affected by this rulemaking.

§439.5. Procedures.

(a) - (c) (No change.)

(d) To apply for a commission examination, the designated training officer or coordinator of the entity providing the training must have completed and submitted the Course/School Prior Approval Submission Form to the commission 20 calendar days prior to the proposed starting date of the course. Upon commission approval of the course, the commission will tentatively schedule a time and place for the examination. A reasonable attempt shall be made to schedule the examination as soon as possible after the completion of the applicable course

and at a place agreeable to the provider of training. The provider of training will receive the following:

(1) Notice of Course Approval--This document will serve as notification that the course has been approved by the commission and will contain the Approval Number assigned by the commission and [;] the course I.D. number [and the number of hours approved for the course].

(2) - (3) (No change.)

(e) - (t) (No change.)

§439.15. Testing for Certification Status.

(a) If an individual who has never held certification in a discipline defined in §421.5, (relating to the definitions of fire protection personnel and volunteer fire protection personnel), seeks certification in that discipline two years or longer after passing a commission examination pertaining to that discipline, the individual shall:

(1) - (2) (No change.)

(3) pass a commission certification examination pertaining to that discipline. The certification examination for some disciplines consists of a written examination only, while the certification examination for other disciplines consists of both a written portion and a performance skills portion. In any case, all portions of an examination must be passed before the individual is considered to have passed the examination. The certification examination must be passed prior to appointment to fire protection duties. If it has been less than four years since an individual passed the performance skills portion of an examination pertaining to a discipline, the individual may be exempted from that portion of the examination if the individual can document twenty hours of continuing education for each year since the individual last passed the performance skills portion of an examination pertaining to the discipline. The continuing education must be in subjects contained in the basic curriculum for the discipline. At least one-half of the continuing education must be hands-on performance skills. The training must be conducted as specified in Chapter 441 of this title (relating to Continuing Education).

(b) If an individual completes an approved training program that has been evaluated and deemed equivalent to a basic certification curriculum approved by the commission, such as an out-of-state or military training program or a training program administered by the State Firemen and Fire Marshals' Association of Texas, the individual must document equivalent training to that required by the commission for certification in the discipline in question, and pass a commission examination for certification status in order to become eligible for certification by the commission as fire protection personnel. If the individual is employed as fire protection personnel, then the examination for certification status must be passed prior to appointment [assignment].

§439.17. Number of Test Questions.

The number of questions on the written portion of the state examination will be based upon the number of recommended [required] hours in the particular curriculum being tested. The standard is outlined below:
Figure: 37 TAC §439.17

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 441. CONTINUING EDUCATION

37 TAC §441.5, §441.21

The Texas Commission on Fire Protection (TCFP) proposes an amendment to §441.5 and new §441.21, concerning general continuing education requirements and continuing education for fire service instructors, in Chapter 441, entitled Continuing Education. The purpose of the amendment is to provide an additional exemption to the requirement of continuing education, and to clarify the need for documentation. The purpose of the new rule is to require continuing education for instructors.

The proposed amendment to §441.5 expands the rule language regarding exemptions to continuing education requirements by adding documented activation to military service to the conditions under which an exemption might be granted. This additional condition applies to members of a paid or volunteer fire department who are on an extended leave for six months or longer, as well as those persons who are not members of a paid or volunteer fire department who are unable to perform work substantially similar in nature to the work performed by fire protection personnel appointed to that discipline.

Proposed new rule §441.21 will require personnel holding instructor certification to complete annual continuing education hours to maintain their certification. The rule provides that subjects selected to meet fire instructor certification continuing education requirements may be selected from either Track A or Track B, or a combination of the two.

The TCFP has determined the amendment and new rule to be in compliance with Texas Government Code, §419.022(b).

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the proposed amendment and new rule are in effect there will be no significant fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed amendment and new rule are in effect, the public benefit anticipated as a result of enforcing the amendment and new rule will be as follows. For the amendment to §441.5, the public benefit will be the assurance that any exemptions to continuing education requirements are granted for legitimate and documented reasons. For new rule §441.21, the public benefit will be that fire service instructors in the state will continue to enhance their knowledge and skills in the various aspects of fire science. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed amendment and new rule.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments must be received within 30 days of publication of these proposals in the *Texas Register*.

The amendment and new rule are proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and

duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.032(b), which provides the TCFP with the authority to establish minimum qualifications relating to continuing education programs and other matters that relate to the competence and reliability of persons to assume and discharge the responsibilities of fire protection personnel, and to prescribe the means of presenting evidence of fulfillment of those qualifications.

Texas Government Code, §§419.008, 419.022, and 419.032(b) are affected by this rulemaking.

§441.5. Requirements.

(a) - (i) (No change.)

(j) Any person who is a member of a paid or volunteer fire department who is on extended leave for a cumulative period of six months or longer due to a documented illness, injury, or activation to military service ~~[because of illness or injury]~~ may be exempted from the continuing education requirement for the current renewal period. Such exemptions shall be reported by the head of the department to the commission at renewal time.

(k) Any individual who is not a member of a paid or volunteer fire department who is unable to perform work, substantially similar in nature as would be performed by fire protection personnel appointed to that discipline, may be exempted from the continuing education requirement for the current renewal period. Commission staff shall determine the exemption using documentation of the illness or injury that cumulatively lasts six months or longer, which is ~~[from documentation]~~ provided by the individual and the individual's treating physician, or by documentation of activation to military service.

(l) - (m) (No change.)

§441.21. Continuing Education for Fire Service Instructor.

(a) Continuing education will be required for individuals certified as a fire service instructor.

(b) Subjects selected to satisfy the continuing education requirement may be selected from either Track A or Track B, or a combination of the two.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 451. FIRE OFFICER SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE OFFICER II

37 TAC §451.203

The Texas Commission on Fire Protection (TCFP) proposes an amendment to §451.203, concerning minimum standards for Fire Officer II certification, in Chapter 451, entitled Fire Officer.

The purpose of the proposed amendment is to provide consistency with certain limitations on the certification of Associate Instructors.

The proposed amendment to §451.203 deletes the associate fire instructor certification as one of the certifications that an individual may hold in order to be certified as a Fire Officer II. The other instructor certifications that an individual can hold to meet the requirements for Fire Officer II certification (intermediate fire education certification and intermediate fire education specialist certification) as well as Fire Officer II, require that an individual hold a basic certification in structural, marine or aircraft rescue fire fighting. Associate instructors cannot hold these certifications and therefore would not qualify for Fire Officer II certification.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the proposed amendment is in effect there will be no significant fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be greater clarity in the requirements for Fire Officer II certification. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed amendment.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments must be received within 30 days of publication of this proposal in the *Texas Register*.

The amendment is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.032(b), which provides the TCFP with the authority to establish minimum qualifications relating to certification.

Texas Government Code, §419.008 and §419.032(b) are affected by this rulemaking.

§451.203. Minimum Standards for Fire Officer II Certification.

(a) In order to be certified as a Fire Officer II an individual must:

(1) - (2) (No change.)

(3) hold, as a minimum, intermediate fire service instructor certification, or intermediate fire education specialist certification [~~or associate instructor certification~~] through the commission; and

(4) - (5) (No change.)

(b) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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**CHAPTER 453. MINIMUM STANDARDS FOR
HAZARDOUS MATERIALS TECHNICIAN**

37 TAC §453.3

Texas Commission on Fire Protection (TCFP) proposes an amendment to §453.3, concerning minimum standards for hazardous materials technician, in Chapter 453, entitled Minimum Standards for Hazardous Materials Technician. The purpose of the proposed amendment is to delete language referencing hours of instruction requirements for training programs.

The amendment to §453.3 is proposed in conjunction with amendments to Chapters 421, 423, 427, 429, 431, 433, and 439 of this title, which are proposed concurrently in this issue of the *Texas Register*. These amendments remove the references to required hours of instruction in the text of the affected rules. The intent of this change is to move towards an emphasis on competency-based outcomes, measured by physical skills evaluation and written testing, rather than reliance on a specific number of hours of instruction, to assure student competency at the completion of fire fighter training.

The TCFP has determined these amendments to be in compliance with Texas Government Code, §419.022(b).

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the proposed amendment is in effect there will be no significant fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be greater clarity and consistency in the process for measuring results of fire fighter training in the state, thereby assuring better-trained fire protection personnel. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed amendment.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments must be received within 30 days of publication of this proposal in the *Texas Register*.

The amendment is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.029, which provides the TCFP with the authority to establish minimum curriculum requirements for training facilities.

Texas Government Code, §§419.008, 419.022, and 419.029 are affected by this rulemaking.

§453.3. Minimum Standards for Hazardous Materials Technician Certification.

(a) In order to be certified as a Hazardous Materials Technician an individual must:

(1) - (2) (No change.)

(3) complete a commission approved hazardous materials technician program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved hazardous materials technician program must consist of one of the following:

(A) completion of a commission approved Hazardous Materials Technician Curriculum [of at least 80 hours] as specified in Chapter 6 of the commission's Certification Curriculum Manual.

(B) - (C) (No change.)

(b) - (c) No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 7. TEXAS COUNCIL ON PURCHASING FROM PEOPLE WITH DISABILITIES

CHAPTER 189. PURCHASES OF PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES

40 TAC §189.6

The Texas Council on Purchasing from People with Disabilities (the Council) proposes to amend Texas Administrative Code, Title 40, Part 7, Chapter 189, §189.6, concerning Criteria for Recognition and Approval of Community Rehabilitation Programs (CRP). These amendments set forth the requirements and procedure for the certification of CRPs and establish the requirement for periodic recertification. The amendments include the deletion of subsections (f) - (j) since that language has been relocated in new §189.13 in Chapter 189, concerning Recognition and Approval of Community Rehabilitation Programs Products and Services, for administrative convenience and clarification. These amendments are required to fulfill the mandates of Senate Bill 261 passed by the 78th Legislature. Senate Bill 261, which became effective September 1, 2003, amended §122.003 of the Human Resources Code to require the Council to adopt rules establishing a formal certification process for CRPs. Section 122.003 also requires that the Council establish a three person certification subcommittee.

Margaret Pfluger, Chairperson of the Texas Council on Purchasing from People with Disabilities, has determined for the first five-year period the amendments are in effect, there will be no fiscal implication for the state or local governments as a result of enforcing or administering the amended section.

Ms. Pfluger has also determined that there will be no additional costs to the state or local governments as a result of enforcing and administering the amended section.

Ms. Pfluger has also determined that there is no anticipated increase or loss of revenue to the state or local government as a result of enforcing and administering the amended section.

Ms. Pfluger has further determined that for each year of the first five-year period the amendments are in effect, the public benefit anticipated as a result of enforcing the amended section will be the consistent compliance with statutory mandates to certify Community Rehabilitation Programs (CRPs) and the assurance that all CRPs participating in the state use program meet certain minimum standards and are periodically reviewed to assure continued compliance with those standards. There will be minimal effect on large, small or micro-businesses. There will be minimal anticipated economic costs to persons who are required to comply with the amendments and there is no impact on local employment.

Comments on the proposal may be submitted to Kelvin Moore, Program Administrator, Texas Council on Purchasing from People with Disabilities, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be submitted electronically to kelvin.moore@tbpc.state.tx.us or faxed to (512) 475-0403. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under the authority of the Texas Human Resource Code, Title 8, Chapter 122, §122.003 and §122.013.

The following code is affected by these amendments: §122.019 and §122.0215.

§189.6. Criteria for Recognition and Approval of Community Rehabilitation Programs.

~~[(a) The council shall establish and follow a documented process for the certification of community rehabilitation programs.]~~

~~[(b) Any CRP currently participating in the state use program on the date these rules are adopted will be allowed to continue so long as they comply with the criteria given in this chapter.]~~

~~[(c) [(e)] A CRP must be a government entity or, private non-profit unincorporated entity which has its own nonprofit status and federal tax identification number and has among its purposes [as its primary purpose] the employment of persons with disabilities to produce products or perform services for compensation, or a private nonprofit incorporated entity with its own federal tax identification number, articles of incorporation and bylaws that establish its existence for the [primary] purpose of employing persons with disabilities to produce products or perform services for compensation.~~

~~[(b) [(d)] A CRP must maintain payroll, human resource functions, accounting and documentation of disability for people employed to produce goods or services under the state use program.~~

~~[(c) [(e)] A CRP must maintain contracts and billing and payment records if it contracts with outside entities for services of any kind.~~

(d) Procedures for Certification

(1) To qualify for participation in the State Use Program under Human Resource Code Chapter 122, an applicant must submit a completed required application and the following documents to the Certification Subcommittee, through the State Use Program's CNA, transmitted by a letter signed by an officer of the corporation, and/or chief administrator for the corporation. Upon receipt, the CNA will verify the completeness and accuracy of each application.

(A) A legible copy of the IRS non-profit determination 501(c)(3) when required by law.

(B) A legible copy of the Certification of Incorporation granted by the Secretary of State when required by law.

(C) A list of each service or product you propose to offer, and the location(s) where it will be produced.

(D) A roster of your board of directors, including names and addresses.

(E) A legible copy of your organizational chart with job title

(F) A legible copy of your current liability insurance for each location where clients will be served.

(G) Current fire inspection certificate awarded by the city, county, or state fire marshal for each location where clients will be served.

(H) A legible copy of the building inspection certificate or occupancy certificate, if required by city regulation, for each location where clients will be served.

(I) Wage exemption certificate (WH-228), if you will be paying sub-minimum wages to clients.

(J) A CRP must provide a notarized statement that at least seventy-five percent (75%) of the hours of direct labor necessary to perform services or reform raw materials, assemble components, manufacture, prepare, process and/package products will be performed by persons with disabilities.

(2) The CNA will submit all new CRP's completed application and necessary documents to the Certification Subcommittee of the Texas Council on Purchasing from People with Disabilities. The CNA will deliver a copy of the application to the Certification Subcommittee not less than fifteen days prior to the regular scheduled Certification Subcommittee meeting.

(A) The Certification Subcommittee is composed of three Council members appointed by the presiding officer to review applications of the Community Rehabilitation Programs.

(B) The Certification Subcommittee shall review each application and documentation and, if acceptable, forward the recommendations to the Council for approval. Once approved the full Council will notify the CRP in writing of their approved designation and present each with a certification number. Only the Council can approve eligibility. The CRP must be certified by the Council before its products or services can be reviewed by the Pricing Subcommittee of the Council on Purchasing from People with Disabilities. A CRP shall not participate in the State Use Program prior to the Council's certification.

(C) A CRP may protest a non-approval recommendation at the next scheduled Certification Subcommittee meeting.

(D) To maintain its certification, each CRP must meet the requirements as set forth in this chapter and Chapter 122 of the Human Resources Code. Each CRP must be recertified every three (3) years by the Council. The staff of the Council shall establish a schedule

for the recertification process for all CRPs. The CNA shall assist each CRP as necessary to facilitate the recertification of the CRPs.

[(f) A CRP desiring to provide services under the state use program must comply with the following requirements to obtain approval from the council:]

[(1) A minimum of thirty-five percent (35%) of the contract price of the service must be paid to persons with disabilities who perform the service in the form of wages and benefits; however, the council may accept a lower percentage when it is satisfied that this percentage is not feasible for a particular service.]

[(2) Supply costs for the service must not exceed twenty percent (20%) of the contract price of the service; however, the council may accept a larger percentage when it is satisfied that this percentage is not feasible for a particular service.]

[(3) Administrative costs allocated to the service must not exceed ten percent (10%) of the contract price for the service. At least seventy-five percent (75%) of the hours of direct labor necessary to perform a service must be done by persons with disabilities; however, the council may accept a lower percentage when it is satisfied that this percentage is not feasible for a particular service.]

[(g) A CRP must comply with the following requirements to obtain approval from the council for state use products:]

[(1) At least seventy-five percent (75%) of the hours of direct labor necessary to reform raw materials, assemble components, manufacture, prepare, process and/or package a product must be done by persons with disabilities; however, the council may accept a lower percentage when it is satisfied that this percentage is not feasible for a particular product.]

[(2) Appreciable contribution to the product by persons with disabilities must be determined on a product-by-product basis to be substantial based on acceptable documentation provided to the council upon application for a product to be approved for the state use program.]

[(h) The rules governing the approval of products to be offered by community rehabilitation programs apply to all items that a community rehabilitation program proposes to offer to state agencies or political subdivisions, regardless of the method of acquisition by the agency, whether by sale or lease. A community rehabilitation program must in fact own any product or products it leases. A proposal by a community rehabilitation program to rent or lease a product to a state agency is a proposal to offer a product, not a service, and the item offered must meet the requirements of these rules governing products. If the product is offered for lease by the community rehabilitation program, the unit cost of the product, for purposes of applying the standards set forth in these rules, is the total cost to the state agency of leasing the product over its expected useful life.]

[(i) Any necessary subcontracted services shall be performed to the maximum extent possible by other community rehabilitation programs and in a manner that maximizes the employment of persons with disabilities.]

[(j) Raw materials or components may be obtained from companies operated for profit, but a community rehabilitation program must own any product that it offers for sale to state agencies or political subdivisions through the state use program and make an appreciable contribution to the product which accounts for a substantial amount of the value added to the product.]

[(k)] The organization must not serve, in whole or in part, as an outlet or front for any entity whose primary purpose is not the employment of people with disabilities.

(f) [(H)] The council may:

(1) recognize a CRP that maintains accreditation by a nationally accepted vocational rehabilitation accrediting organization, and

(2) approve CRP services that have been approved for a purchase by a state habilitation or rehabilitation agency.

(g) [(H)] The council, at its sole discretion, may review, or have reviewed, any CRP approved to participate in this program to verify that the CRP meets the applicable qualifications contained in this chapter.

(h) [(H)] Violation of any of the requirements of [criteria given in] this chapter, or verified instances of conflict of interest by [for] a CRP may result in suspension of approval or in disapproval of a CRP's eligibility to participate in this program, and/or may result in suspension or disqualification of any product or service.

(i) [(H)] Neither the council, nor any individual member, the State of Texas, nor any other Texas state agency will be responsible for

any loss or losses, financial or otherwise, incurred by any CRP should its product not be approved for the state use program as provided by law.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2005.

TRD-200500889

Margaret Pfluger

Chairman

Texas Council on Purchasing from People with Disabilities

Earliest possible date of adoption: April 17, 2005

For further information, please call: (512) 463-3244

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER D. VOTING SYSTEM CERTIFICATION

1 TAC §81.60

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed amended section, submitted by the Office of Secretary of State has been automatically withdrawn. The amended section as proposed appeared in the August 27, 2004, issue of the *Texas Register* (29 TexReg 8194).

Filed with the Office of the Secretary of State on March 2, 2005.
TRD-200500939

◆ ◆ ◆

1 TAC §81.63

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed repeal section, submitted by the Office of the Secretary of State has been automatically withdrawn. The repealed section as proposed appeared in the August 27, 2004, issue of the *Texas Register* (29 TexReg 8195).

Filed with the Office of the Secretary of State on March 2, 2005.
TRD-200500940

◆ ◆ ◆

1 TAC §81.65

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed new section, submitted by the Office of the Secretary of State has been automatically withdrawn. The new section as proposed appeared in the August 27, 2004, issue of the *Texas Register* (29 TexReg 8195).

Filed with the Office of the Secretary of State on March 2, 2005.
TRD-200500941

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TITLE 10. COMMUNITY DEVELOPMENT

PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

CHAPTER 255. TEXAS COMMUNITY DEVELOPMENT PROGRAM

SUBCHAPTER A. ALLOCATION OF PROGRAM FUNDS

10 TAC §255.17

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed new section, submitted by the Office of Rural Community Affairs has been automatically withdrawn. The new section as proposed appeared in the August 27, 2004, issue of the *Texas Register* (29 TexReg 8236).

Filed with the Office of the Secretary of State on March 2, 2005.
TRD-200500942

◆ ◆ ◆

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 313. OFFICIALS AND RULES OF HORSE RACING

SUBCHAPTER A. OFFICIALS

The Texas Racing Commission adopts amendments to §§313.1, 313.4, 313.22, 313.41, 313.43, 313.45, 313.53, and 313.60. The amendments are adopted without changes to the proposal published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11512) and the amendments will not be republished.

This subchapter specifies which officials must be present at live horse race meetings conducted in this state and their respective powers and duties. In general, the adopted amendments conform the rules to the Commission's current rule style, eliminate obsolete provisions, and correct typographical errors. In addition, the amendments to §313.1 and §313.4 clarify the executive secretary's authority to approve racing officials appointed by a racetrack association. The amendment to §313.22, clarifies the standards by which the stewards should exercise their discretion in resolving disputes over racing matters. The amendment to §313.41 authorizes the racing secretary to delegate his or her duties to another racing office employee and clarifies the deadline for posting weights in handicap races. The amendments are adopted in conjunction with the agency's review of Chapter 313 in accordance with Texas Government Code §2001.039. The Commission has determined that the reason for adoption of these amendments continues to exist.

Adoption of these amendments will ensure that the Commission's rules will conform to current practice, will be more easily understood by licensees required to comply with the rules, and will be more easily enforced.

No comments were received regarding the adoption of the amendments.

DIVISION 1. GENERAL PROVISIONS

16 TAC §313.1, §313.4

The amendments are adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules regulating horse or greyhound racing; §3.021 which authorizes the Commission to adopt rules to regulate workouts at training facilities; §3.07, which authorizes the Commission to adopt rules specifying the authority and duties of racing officials; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks; and §6.061,

which authorizes the Commission to regulate inappropriate or unsafe conditions at pari-mutuel racetracks.

The statute affected by the amendments is Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 4, 2005.

TRD-200500990

Nash J. Gonzales

General Counsel

Texas Racing Commission

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For further information, please call: (512) 490-4009



DIVISION 2. DUTIES OF STEWARDS

16 TAC §313.22

The amendments are adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules regulating horse or greyhound racing; §3.021 which authorizes the Commission to adopt rules to regulate workouts at training facilities; §3.07, which authorizes the Commission to adopt rules specifying the authority and duties of racing officials; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks; and §6.061, which authorizes the Commission to regulate inappropriate or unsafe conditions at pari-mutuel racetracks.

The statute affected by the amendments is Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Nash J. Gonzales

General Counsel

Texas Racing Commission

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For further information, please call: (512) 490-4009



DIVISION 3. DUTIES OF OTHER OFFICIALS

16 TAC §§313.41, 313.43, 313.45, 313.53, 313.60

The amendments are adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules regulating horse or greyhound racing; §3.021 which authorizes the Commission to adopt rules to regulate workouts at training facilities; §3.07, which authorizes the Commission to adopt rules specifying the authority and duties of racing officials; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks; and §6.061, which authorizes the Commission to regulate inappropriate or unsafe conditions at pari-mutuel racetracks.

The statute affected by the amendments is Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Nash J. Gonzales

General Counsel

Texas Racing Commission

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SUBCHAPTER B. ENTRIES, SCRATCHES, AND ALLOWANCES

The Texas Racing Commission adopts amendments to §§313.101, 313.108, 313.110, 313.135, 313.136, 313.165, and 313.166. The amendments are adopted without changes to the proposal published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11514) and the amendments will not be republished.

This subchapter prescribes the requirements and procedures for entries, scratches, and weight allowances. The adopted amendments conform the rules to the Commission's current rule style, eliminate obsolete provisions, and correct typographical errors. The amendments are adopted in conjunction with the agency's review of Chapter 313 in accordance with Texas Government Code §2001.039. The Commission has determined that the reason for adoption of these amendments continues to exist.

Adopting these amendments will ensure that the Commission's rules will conform to current practice, will be more easily understood by licensees required to comply with the rules, and will be more easily enforced.

No comments were received regarding the adoption of the amendments.

DIVISION 1. ENTRIES

16 TAC §§313.101, 313.108, 313.110

The amendments are adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make

rules regulating horse or greyhound racing; §3.021 which authorizes the Commission to adopt rules to regulate workouts at training facilities; §3.07, which authorizes the Commission to adopt rules specifying the authority and duties of racing officials; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks; and §6.061, which authorizes the Commission to regulate inappropriate or unsafe conditions at pari-mutuel racetracks.

The statute affected by the amendments is Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Nash J. Gonzales

General Counsel

Texas Racing Commission

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For further information, please call: (512) 490-4009



DIVISION 2. SCRATCHES

16 TAC §§313.135, §313.136

The amendments are adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules regulating horse or greyhound racing; §3.021 which authorizes the Commission to adopt rules to regulate workouts at training facilities; §3.07, which authorizes the Commission to adopt rules specifying the authority and duties of racing officials; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks; and §6.061, which authorizes the Commission to regulate inappropriate or unsafe conditions at pari-mutuel racetracks.

The statute affected by the amendments is Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Nash J. Gonzales

General Counsel

Texas Racing Commission

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DIVISION 3. ALLOWANCES AND PENALTIES

16 TAC §§313.165, §313.166

The amendments are adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make

rules regulating horse or greyhound racing; §3.021 which authorizes the Commission to adopt rules to regulate workouts at training facilities; §3.07, which authorizes the Commission to adopt rules specifying the authority and duties of racing officials; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks; and §6.061, which authorizes the Commission to regulate inappropriate or unsafe conditions at pari-mutuel racetracks.

The statute affected by the amendments is Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Nash J. Gonzales

General Counsel

Texas Racing Commission

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For further information, please call: (512) 490-4009



SUBCHAPTER C. CLAIMING RACES

16 TAC §313.303, §313.312

The Texas Racing Commission adopts amendments to §313.303 and §313.312. The amendments are adopted without changes to the proposal published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11516) and the amendments will not be republished.

This subchapter prescribes the requirements and procedures for claiming races. In general, the adopted amendments conform the rules to the Commission's current rule style, eliminate obsolete provisions, and correct typographical errors. The amendment to §313.312 eliminates the requirement that the claimant of a horse be notified of a positive test. The amendments are adopted in conjunction with the agency's review of Chapter 313 in accordance with Texas Government Code §2001.039. The Commission has determined that the reason for adoption of these amendments continues to exist.

Adoption of these amendments will ensure that the Commission's rules will conform to current practice, will be more easily understood by licensees required to comply with the rules, and will be more easily enforced.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules regulating horse or greyhound racing; §3.021 which authorizes the Commission to adopt rules to regulate workouts at training facilities; §3.07, which authorizes the Commission to adopt rules specifying the authority and duties of racing officials; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks; and §6.061, which authorizes the Commission to regulate inappropriate or unsafe conditions at pari-mutuel racetracks.

The statute affected by the amendments is Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Nash J. Gonzales

General Counsel

Texas Racing Commission

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SUBCHAPTER D. RUNNING OF THE RACE DIVISION 1. JOCKEYS

16 TAC §313.405

The Texas Racing Commission adopts an amendment to §313.405. The amendment is adopted without changes to the proposal published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11517) and the amendment will not be republished.

This subchapter prescribes the requirements and procedures for the actual running of horse races. The amendment to §313.405 eliminates the use of the term "apprentice jockey" in this one rule, to clarify that all Commission rules that applicable to jockeys apply to apprentice jockeys as well. The amendment is adopted in conjunction with the agency's review of Chapter 313 in accordance with Texas Government Code §2001.039. The Commission has determined that the reason for adoption of this amendment continues to exist.

Adoption of this amendment will ensure that the Commission's rules will conform to current practice, will be more easily understood by licensees required to comply with the rules, and will be more easily enforced.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules regulating horse or greyhound racing; §3.021 which authorizes the Commission to adopt rules to regulate workouts at training facilities; §3.07, which authorizes the Commission to adopt rules specifying the authority and duties of racing officials; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks; and §6.061, which authorizes the Commission to regulate inappropriate or unsafe conditions at pari-mutuel racetracks.

The statute affected by the amendment is Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Nash J. Gonzales
General Counsel
Texas Racing Commission
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For further information, please call: (512) 490-4009



16 TAC §313.410

The Texas Racing Commission adopts the repeal of §313.410. The repeal is adopted without changes to the proposal published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11517) and the repeal of this section of Chapter 313 will not be republished.

This subchapter prescribes the requirements and procedures for the actual running of horse races. The repeal of §313.410 is appropriate because it is obsolete and extends beyond the level of regulation desired by the Commission. The repeal is adopted in conjunction with the agency's review of Chapter 313 in accordance with Texas Government Code §2001.039. The Commission has determined that the reason for the repeal of this section of Chapter 313 continues to exist.

Adoption of this repeal will ensure that the Commission's rules will conform to current practice, will be more easily understood by licensees required to comply with the rules, and will be more easily enforced.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules regulating horse or greyhound racing; §3.021 which authorizes the Commission to adopt rules to regulate workouts at training facilities; §3.07, which authorizes the Commission to adopt rules specifying the authority and duties of racing officials; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks; and §6.061, which authorizes the Commission to regulate inappropriate or unsafe conditions at pari-mutuel racetracks.

The statute affected by the proposal is Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Nash J. Gonzales
General Counsel
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SUBCHAPTER E. TRAINING FACILITIES

16 TAC §313.505, §313.507

The Texas Racing Commission adopts amendments to §313.505 and §313.507. The amendments are adopted without changes to the proposal published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11518) and the amendments will not be republished.

This subchapter prescribes the licensing requirements for training facilities and the procedures for conducting official workouts. In general, the adopted amendments conform the rules to the Commission's current rule style, eliminate obsolete provisions, and correct typographical errors. The amendment to §313.507 raises the license fee for a training facility employee license to \$20. The amendments are adopted in conjunction with the agency's review of Chapter 313 in accordance with Texas Government Code §2001.039. The Commission has determined that the reason for adoption of these amendments continues to exist.

Adoption of these amendments will ensure that the Commission's rules will conform to current practice, will be more easily understood by licensees required to comply with the rules, and will be more easily enforced.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules regulating horse or greyhound racing; §3.021 which authorizes the Commission to adopt rules to regulate workouts at training facilities; §3.07, which authorizes the Commission to adopt rules specifying the authority and duties of racing officials; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks; and §6.061, which authorizes the Commission to regulate inappropriate or unsafe conditions at pari-mutuel racetracks.

The statute affected by the amendments is Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Nash J. Gonzales
General Counsel
Texas Racing Commission
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For further information, please call: (512) 490-4009



CHAPTER 315. OFFICIALS AND RULES FOR GREYHOUND RACING

SUBCHAPTER A. OFFICIALS

The Texas Racing Commission adopts amendments to §§315.1-315.2, 315.31-315.32, and 315.36-315.37. The amendments are adopted without changes to the proposal published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11519) and the amendments will not be republished.

This subchapter specifies which officials must be present at live greyhound race meetings conducted in this state and their respective powers and duties. In general, the adopted amendments conform the rules to the Commission's current rule style, eliminate obsolete provisions, and correct typographical errors. In addition, the amendments to §313.1 clarifies the executive secretary's authority to approve racing officials appointed by a racetrack association. The amendments are adopted in conjunction with the agency's review of Chapter 313 in accordance with Texas Government Code §2001.039. The Commission has determined that the reason for adoption of these amendments continue to exist.

Adoption of these amendments will ensure that the Commission's rules will conform to current practice, will be more easily understood by licensees required to comply with the rules, and will be more easily enforced.

No comments were received regarding the adoption of the amendments.

DIVISION 1. APPOINTMENT OF OFFICIALS

16 TAC §315.1, §315.2

The amendments are adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules regulating horse or greyhound racing; §3.021 which authorizes the Commission to adopt rules to regulate workouts at training facilities; §3.07, which authorizes the Commission to adopt rules specifying the authority and duties of racing officials; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks; and §6.061, which authorizes the Commission to regulate inappropriate or unsafe conditions at pari-mutuel racetracks.

The statute affected by the amendments is Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 4, 2005.

TRD-200500999

Nash J. Gonzales

General Counsel

Texas Racing Commission

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For further information, please call: (512) 490-4009



DIVISION 2. DUTIES

16 TAC §§315.31, 315.32, 315.36, 315.37

The amendments are adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules regulating horse or greyhound racing; §3.021 which authorizes the Commission to adopt rules to regulate workouts at training facilities; §3.07, which authorizes the Commission to adopt rules specifying the authority and duties of racing officials; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks; and §6.061, which authorizes the Commission to regulate inappropriate or unsafe conditions at pari-mutuel racetracks.

The statute affected by the amendments is Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Nash J. Gonzales

General Counsel

Texas Racing Commission

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For further information, please call: (512) 490-4009



SUBCHAPTER B. ENTRIES AND PRE-RACE PROCEDURES

16 TAC §§315.101 - 315.103, 315.107, 315.108, 315.110, 315.111

The Texas Racing Commission adopts amendments to §§315.101 - 315.103, 315.107 - 315.108, and 315.110 - 315.111. The amendments are adopted without changes to the proposal published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11520) and the amendments will not be republished.

This subchapter prescribes the requirements and procedures for entries, scratches, sales, and other pre-race matters. In general, the adopted amendments conform the rules to the Commission's current rule style, eliminate obsolete provisions, and correct typographical errors. In addition, the amendment to §315.101 clarifies the type of identifying information the racetrack must have on file for each greyhound before it races. The amendment to §315.107 eliminates provisions relating to the sale of greyhounds which duplicate language in §315.104. The amendment to §315.110 clarifies the standards by which the racing judges should exercise their discretion in scratching a greyhound from a race. The amendment to §315.111 clarifies the schooling requirements for greyhounds that have not raced for 30 days. The amendments are adopted in conjunction with the agency's review of Chapter 313 in accordance with Texas Government Code §2001.039. The Commission has determined that the reason for adoption of these amendments continue to exist.

Adoption of these amendments will ensure that the Commission's rules will conform to current practice, will be more easily understood by licensees required to comply with the rules, and will be more easily enforced and will ensure the racing greyhounds are competitive and healthy.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules regulating horse or greyhound racing; §3.021 which authorizes the Commission to adopt rules to regulate workouts at training facilities; §3.07, which authorizes the Commission to adopt rules specifying the authority and duties of racing officials; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks; and §6.061,

which authorizes the Commission to regulate inappropriate or unsafe conditions at pari-mutuel racetracks.

The statute affected by the amendments is Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 4, 2005.

TRD-200501001

Nash J. Gonzales

General Counsel

Texas Racing Commission

Effective date: April 4, 2005

Proposal publication date: December 17, 2004

For further information, please call: (512) 490-4009



SUBCHAPTER C. RACE PROCEDURES

16 TAC §§315.201 - 315.203, 315.205, 315.210, 315.211

The Texas Racing Commission adopts amendments to §§315.201 - 315.203, 315.205, and 315.210 - 315.211. The amendments are adopted without changes to the proposal published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11522) and the amendments will not be republished.

This subchapter prescribes the requirements and procedures for the conduct of greyhound races. In general, the adopted amendments conform the rules to the Commission's current rule style, eliminate obsolete provisions, and correct typographical errors. The amendments to §315.201 and §315.202 clarify the authority of the racing judges with respect to weigh-in and weight changes. The amendments are adopted in conjunction with the agency's review of Chapter 313 in accordance with Texas Government Code §2001.039. The Commission has determined that the reason for adoption of these amendments continues to exist.

Adoption of these amendments will ensure that the Commission's rules will conform to current practice, will be more easily understood by licensees required to comply with the rules, and will be more easily enforced.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules regulating horse or greyhound racing; §3.021 which authorizes the Commission to adopt rules to regulate workouts at training facilities; §3.07, which authorizes the Commission to adopt rules specifying the authority and duties of racing officials; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks; and §6.061, which authorizes the Commission to regulate inappropriate or unsafe conditions at pari-mutuel racetracks.

The statute affected by the amendments is Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200501002

Nash J. Gonzales

General Counsel

Texas Racing Commission

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For further information, please call: (512) 490-4009



PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. BINGO REGULATION AND TAX

The Texas Lottery Commission adopts new rules 16 TAC, Chapter 402, §§402.100 - 402.103, 402.200 - 402.203, 402.300 - 402.304, 402.400 - 402.407, 402.500 - 402.504, 402.600 - 402.603, and 402.700 - 402.705, relating to Bingo Regulation and Tax without changes to the proposed text as published in the January 21, 2005, issue of the *Texas Register* (30 TexReg 186). The new provisions will make nonsubstantive changes, including: (1) renaming Chapter 402 the "Charitable Bingo Administrative Rules"; (2) reorganizing Chapter 402 into subchapters; (3) updating legal citations; and (4) deleting references to obsolete dates.

No comments were received.

SUBCHAPTER A. ADMINISTRATION

16 TAC §§402.100 - 402.103

The new rules are adopted under Occupations Code, §2001.054 which authorizes the Commission to adopt rules necessary to enforce and administer the Bingo Enabling Act.

Occupations Code, Chapter 2001 is affected by the adopted new sections.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 1, 2005.

TRD-200500922

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

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For further information, please call: (512) 344-5113



SUBCHAPTER B. CONDUCT OF BINGO

16 TAC §§402.200 - 402.203

The new rules are adopted under Occupations Code, §2001.054 which authorizes the Commission to adopt rules necessary to enforce and administer the Bingo Enabling Act.

Occupations Code, Chapter 2001 is affected by the adopted new sections.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200500921

Kimberly L. Kiplin
General Counsel

Texas Lottery Commission

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For further information, please call: (512) 344-5113



SUBCHAPTER C. BINGO GAMES AND EQUIPMENT

16 TAC §§402.300 - 402.304

The new rules are adopted under Occupations Code, §2001.054 which authorizes the Commission to adopt rules necessary to enforce and administer the Bingo Enabling Act.

Occupations Code, Chapter 2001 is affected by the adopted new sections.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200500923

Kimberly L. Kiplin
General Counsel

Texas Lottery Commission

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For further information, please call: (512) 344-5113



SUBCHAPTER D. LICENSING REQUIREMENTS

16 TAC §§402.400 - 402.407

The new rules are adopted under Occupations Code, §2001.054 which authorizes the Commission to adopt rules necessary to enforce and administer the Bingo Enabling Act.

Occupations Code, Chapter 2001 is affected by the adopted new sections.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200500924

Kimberly L. Kiplin
General Counsel

Texas Lottery Commission

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For further information, please call: (512) 344-5113



SUBCHAPTER E. BOOKS AND RECORDS

16 TAC §§402.500 - 402.504

The new rules are adopted under Occupations Code, §2001.054 which authorizes the Commission to adopt rules necessary to enforce and administer the Bingo Enabling Act.

Occupations Code, Chapter 2001 is affected by the adopted new sections.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200500926

Kimberly L. Kiplin
General Counsel

Texas Lottery Commission

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For further information, please call: (512) 344-5113



SUBCHAPTER F. PAYMENT OF TAXES, PRIZE FEES AND BONDS

16 TAC §§402.600 - 402.603

The new rules are adopted under Occupations Code, §2001.054 which authorizes the Commission to adopt rules necessary to enforce and administer the Bingo Enabling Act.

Occupations Code, Chapter 2001 is affected by the adopted new sections.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200500927

Kimberly L. Kiplin
General Counsel

Texas Lottery Commission

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For further information, please call: (512) 344-5113



SUBCHAPTER G. COMPLIANCE AND EQUIPMENT

16 TAC §§402.700 - 402.705

The new rules are adopted under Occupations Code, §2001.054 which authorizes the Commission to adopt rules necessary to enforce and administer the Bingo Enabling Act.

Occupations Code, Chapter 2001 is affected by the adopted new sections.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

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For further information, please call: (512) 344-5113

CHAPTER 402. BINGO REGULATION AND TAX

16 TAC §§402.520, 402.530, 402.531, 402.535, 402.540 - 402.550, 402.554 - 402.556, 402.558, 402.567, 402.568, 402.571, 402.573, 402.580 - 402.584, 402.590 - 402.592, 402.595, 402.596, 402.598, 402.601, 402.602

The Texas Lottery Commission adopts the repeal of §§402.520, 402.530, 402.531, 402.535, 402.540 - 402.550, 402.554 - 402.556, 402.558, 402.567, 402.568, 402.571, 402.573, 402.580 - 402.584, 402.590 - 402.592, 402.595, 402.596, 402.598, 402.601, and 402.602, relating to Bingo Regulation and Tax without changes to the proposal as published in the January 21, 2005, issue of the *Texas Register* (30 TexReg 220).

The purpose of the repeal is to remove these sections from the agency rules in conjunction with the simultaneous adoption of new rules making nonsubstantive changes, including: (1) renaming Chapter 402 the "Charitable Bingo Administrative Rules"; (2) reorganizing Chapter 402 into subchapters; (3) updating legal citations; and (4) deleting references to obsolete dates.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Occupations Code, §2001.054 which authorizes the Commission to adopt rules necessary to enforce and administer the Bingo Enabling Act.

The repeal affects Government Code, Chapter 2001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 1, 2005.

TRD-200500928

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Effective date: March 21, 2005

Proposal publication date: January 21, 2005

For further information, please call: (512) 344-5113

CHAPTER 403. GENERAL ADMINISTRATION

16 TAC §403.110

The Texas Lottery Commission adopts new §403.110, relating to a petition for adoption of rules without changes to the proposed text as published in the December 31, 2004, issue of the *Texas Register* (29 TexReg 12074).

The purpose of the new rule is to provide procedures to petition for adoption of a new rule or an amendment to a rule.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Government Code, §466.015 which authorizes the Commission to adopt all rules necessary to administer the State Lottery Act and to adopt rules governing the establishment and operation of the lottery, and under Government Code, §467.102 which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction. The new section is also adopted under Government Code, §2001.021(b) which requires a state agency to by rule prescribe the form for a petition and the procedure for the submission, consideration, and disposition to request the adoption of a rule.

The new rule implements Government Code, Chapter 2001, §2001.021.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 1, 2005.

TRD-200500929

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

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Proposal publication date: December 31, 2004

For further information, please call: (512) 344-5113

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§101.5, 101.7, 101.9, 101.11

The State Board of Education (SBOE) adopts amendments to §§101.5, 101.7, 101.9, and 101.11, concerning student assessment. The amendments are adopted without changes to the proposed text as published in the December 10, 2004, issue of the *Texas Register* (29 TexReg 11449) and will not be republished. The sections address provisions relating to student testing requirements, testing requirements for graduation, grade advancement requirements, and remediation. The adopted amendments update and revise the rules to align with current statute.

The goal of the Texas assessment program is to measure and support student progress toward achieving academic success. The primary purpose of the state student assessment program

is to provide an accurate measure of student achievement in the areas of reading, writing, mathematics, social studies, and science. The major components of the program are the Texas Assessment of Knowledge and Skills (TAKS) tests, the Reading Proficiency Tests in English (RPTE), and the State-Developed Alternative Assessment (SDAA). Based on the requirements of the Texas Education Code (TEC), the assessment program evaluates the degree to which students have mastered the state-mandated curriculum, the Texas Essential Knowledge and Skills (TEKS).

First administered in 2002 - 2003, the TAKS is administered to students in mathematics in Grades 3 - 11; reading in Grades 3 - 9; writing in Grades 4 and 7; English language arts in Grades 10 and 11; science in Grades 5, 10, and 11; and social studies in Grades 8, 10, and 11.

The RPTE is administered to limited English proficient (LEP) students in Grades 3 - 12. Along with the TAKS in English and Spanish, the RPTE provides a comprehensive system for assessing LEP students. The RPTE, designed specifically for second language learners, provides useful data on these students' current reading levels, and serves as a measure of growth in students' English reading proficiency.

As specified by the TEC, §39.023, the SDAA measures the academic performance of special education students in reading and mathematics enrolled in Grades 3 - 8 and writing in Grades 4 and 7 who are being instructed in the TEKS but who are exempted from the TAKS test by their admission, review, and dismissal (ARD) committee. In 2004 - 2005, the SDAA will be expanded to incorporate students in Grades 9 and 10. The SDAA is administered on the same schedule as TAKS and is designed to measure annual growth based on appropriate expectations for each student as decided by the student's ARD committee.

The adopted amendments include the following actions to update and align rules with current statute.

Section 101.5, Student Testing Requirements, is amended to extend the SDAA to incorporate Grades 9 and 10 in the 2004 - 2005 school year. Section 101.5 is also amended by adding language from §101.7(a)(3) to extend the policy on waiving the testing requirements for foreign exchange students to include Grades 9 and 10 as well as exit level. It will be more appropriate for this provision to be included in §101.5 rather than §101.7 since it no longer applies solely to exit-level students beginning with school year 2004 - 2005.

Section 101.7, Testing Requirements for Graduation, is amended to delete subsection (a)(3) relating to foreign exchange students since the provision is included in §101.5.

Section 101.9, Grade Advancement Requirements, and §101.11, Remediation, are amended to correct the references to the TEC.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Education Code, Chapter 39, Subchapter B, which authorizes the State Board of Education to adopt rules to create and implement a statewide assessment program.

The amendments implement the Texas Education Code, Chapter 39, Subchapter B.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 3, 2005.

TRD-200500966

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Effective date: March 23, 2005

Proposal publication date: December 10, 2004

For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §573.20

The Texas Board of Veterinary Medical Examiners adopts amendments to §573.20, concerning Responsibility for Acceptance of Medical Care, without changes to the proposed text as published in the November 5, 2004, issue of the *Texas Register* (29 TexReg 10198).

The amendments clarify a situation where a client specifically asks that a particular veterinarian diagnose and/or treat the client's animal. This issue may become important in a situation where the initial veterinarian seen by the client is not the one that actually treats the client's animal. The amended rule requires that when a client makes a specific request for the services of a certain veterinarian, the veterinarian must inform the client if the veterinarian reasonably believes that another veterinarian may perform some or all of the diagnosis and/or treatment of the patient. The amendments will improve the understanding of clients as to who may treat his or her pet.

No comments were received concerning the amendments.

The amended section is adopted under the authority of the Occupations Code, §801.151(a), which authorizes the Board to adopt rules necessary to administer the Veterinary Licensing Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2005.

TRD-200500950

Julie A. Barker

Executive Assistant

Texas Board of Veterinary Medical Examiners

Effective date: March 22, 2005

Proposal publication date: November 5, 2004

For further information, please call: (512) 305-7555

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SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.62

The Texas Board of Veterinary Medical Examiners adopts amendments to §573.62, concerning Violation of Board Orders/Negotiated Settlements, without changes to the proposed text as published in the November 5, 2004, issue of the *Texas Register* (29 TexReg 10198).

The amendments specifically require that persons who are the subject of a Board order shall abide by the terms of the order. If a person violates this directive, the Board may immediately refer the person to the Attorney General for prosecution under the Veterinary Licensing Act, or, alternatively, open an administrative complaint against the person. These provisions strengthen the Board's ability to prosecute persons who violate Board orders and negotiated settlements.

No comments were received concerning the amendments.

The amended section is adopted under the authority of the Occupations Code, §801.151(a), which authorizes the Board to adopt rules necessary to administer the Veterinary Licensing Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2005.

TRD-200500951

Julie A. Barker

Executive Assistant

Texas Board of Veterinary Medical Examiners

Effective date: March 22, 2005

Proposal publication date: November 5, 2004

For further information, please call: (512) 305-7555

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CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

SUBCHAPTER A. BOARD MEMBERS AND MEETINGS--DUTIES

22 TAC §577.2

The Texas Board of Veterinary Medical Examiners adopts amendments to §577.2 concerning Meetings, without changes to the proposed text as published in the November 5, 2004, issue of the *Texas Register* (29 TexReg 10199). The amendments clarify the question of who shall preside at meetings of the Board; when and by whom meetings may be called; what constitutes a quorum and affirmative vote of the Board members; and recusal of a Board member. The amended section provides the public with a better understanding of the Board's procedures.

No comments were received concerning the amendments.

The amended section is adopted under the authority of the Occupations Code, §801.151 (a), which authorizes the Board to adopt rules necessary to administer the Veterinary Licensing Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2005.

TRD-200500956

Julie A. Barker

Executive Assistant

Texas Board of Veterinary Medical Examiners

Effective date: March 22, 2005

Proposal publication date: November 5, 2004

For further information, please call: (512) 305-7555

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SUBCHAPTER B. STAFF AND MISCELLANEOUS

22 TAC §577.13

The Texas Board of Veterinary Medical Examiners adopts the repeal of §577.13 concerning Inspection of Public Records Under the Open Records Act, without changes to the proposed text as published in the November 5, 2004, issue of the *Texas Register* (29 TexReg 10200). The section is repealed because much of it duplicates the Texas Public Information Act and Veterinary Licensing Act, and is unnecessary.

No comments were received concerning the amendments.

The section is repealed under the authority of the Occupations Code, §801.151 (a), which authorizes the Board to adopt rules necessary to administer the Veterinary Licensing Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200500957

Julie A. Barker

Executive Assistant

Texas Board of Veterinary Medical Examiners

Effective date: March 22, 2005

Proposal publication date: November 5, 2004

For further information, please call: (512) 305-7555

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER A. EXAMINATION AND FINANCIAL ANALYSIS

28 TAC §7.67

The Commissioner of Insurance adopts the repeal of §7.67, concerning the 1997 annual statement and 1998 quarterly statements, other reporting forms, and diskettes necessary to report

information concerning the financial condition and business operations and activities of insurers and other entities regulated by the department. The repeal of the section is adopted without changes to the proposal as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11899).

The repeal of the section is necessary to permit the simultaneous adoption of a new §7.67 that is published elsewhere in this issue of the *Texas Register*. The new §7.67 adopts by reference the 2004 annual and quarterly statement blanks, other reporting forms, electronic data filings with the National Association of Insurance Commissioners and instructions to be used by insurers and certain other entities regulated by the Texas Department of Insurance when reporting their financial condition and business operations and activities of the 2004 calendar year.

The repeal of the section will eliminate an obsolete section. The reporting forms adopted under the repealed section have been filed and the due dates for filing the 1997 annual statements, 1998 quarterly statements and other reports have passed, therefore the repealed section is no longer necessary.

No comments were received regarding the repeal.

The repeal of the section is adopted under the Insurance Code §§802.001 - 802.003, 802.051 - 802.056 and 36.001. Sections 802.001 - 802.003 and §§802.051 - 802.056 authorize the commissioner to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 28, 2005.

TRD-200500891

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: March 20, 2005

Proposal publication date: December 24, 2004

For further information, please call: (512) 463-6327



28 TAC §7.67

The Commissioner of Insurance adopts new §7.67, concerning 2004 annual and quarterly statement blanks, other reporting forms, electronic data filings with the National Association of Insurance Commissioners (NAIC) via the Internet and instructions to be used by insurers and certain other entities regulated by the Texas Department of Insurance when reporting their financial condition and business operations and activities of the 2004 calendar year. The new section is adopted with changes to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11899).

The new section is necessary to adopt the reporting forms and instructions to be used by insurers and certain other entities

regulated by the department when reporting their financial condition and business operations and activities during 2004 and the requirement to file such completed statement blanks and other reporting forms, including diskettes or electronic filings with the NAIC via the Internet. The annual and quarterly statement blanks, other reporting forms, and diskettes or electronic filings with the NAIC via the Internet are required by statute for reporting the financial condition and business operations and activities conducted during the 2004 calendar year. The information provided is necessary for the department to monitor the solvency, business activities and statutory compliance of the insurers and other entities regulated by the department. Most of the forms adopted by the section have been promulgated by the NAIC and are used by other state insurance regulators. The use of these forms promotes uniformity and efficiency in the regulation of insurance companies and other entities regulated by the department. These forms are reviewed each year to assure that the information required to complete the form is necessary for the department to perform its duties.

The new section defines terms relevant to the statement blanks and reporting forms; provides the dates by which certain reports are to be filed; and adopts by reference the NAIC 2004 annual and 2004 quarterly statement blanks, other reporting forms and instructions for reporting the financial condition and business operations and activities; and requires insurance companies and certain other regulated entities to file such annual and quarterly statements and other reporting forms with the department and/or the NAIC as directed. The required documents will provide financial information to the public and regulatory agencies, and will be used by the department to monitor the financial condition of insurers and other regulated entities licensed in Texas to assure financial solvency and compliance with applicable laws and accounting requirements. The department has corrected typographical errors and added a catch line to subsection (i) for consistency and clarification.

No comments were received regarding the new section.

The new section is adopted under the Insurance Code §§802.001 - 802.003 and §§802.051 - 802.056, which authorize the commissioner to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business, and require certain insurers to make filings with the National Association of Insurance Commissioners; Articles 3.77, 9.22, 9.47, 21.49, 21.54, and §§841.255, 842.003, 842.201, 842.202, 843.151, 843.155, 861.254, 861.255, 862.001, 862.003, 882.001, 882.003, 883.002, 883.204, 884.256, 885.401, 885.403 - 885.406, 887.009, 887.060, 887.401 - 887.407, 911.001, 911.304, 912.002, 912.201 - 912.203, 912.301, 941.252, 942.201, 961.002, 961.003, 961.052, 961.202, 982.004, 982.251 - 982.254, 982.004, 982.101, 982.103, 984.101 - 984.103, 984.153, 984.201, and 984.202 which require the filing of financial reports and other information by insurers and other regulated entities, and specify particular rulemaking authority of the commissioner relating to those insurers and other regulated entities; §§982.001, 982.002, 982.004, 982.052, 982.102 - 982.104, 982.106, 982.108, 982.110 - 982.112, 982.201 - 982.204, 982.251 - 982.255, and 982.302 - 982.306 which provide the conditions under which foreign insurers are permitted to do business in this state and require foreign insurers to comply with the provisions of the Insurance Code; §§844.001 - 844.005, 844.051 - 844.054, and 844.101 which authorize the commissioner to adopt rules to implement the regulation of

nonprofit health corporations holding a certificate of authority under Insurance Code, Title 2, Chapter 844; Article 21.39 which requires insurers to establish adequate reserves and provides for the adoption of each current formula for establishing reserves applicable to each line of insurance; §32.041 which requires the department to furnish the statement blanks and other reporting forms necessary for companies to comply with the filing requirements; and §36.001 which provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§7.67. Requirements for Filing the 2004 NAIC Quarterly and 2004 NAIC Annual Statements, Other Reporting Forms, and Electronic Data Filings with the NAIC.

(a) Scope. This section provides insurers and other regulated entities with the requirements for the 2004 quarterly statements, 2004 annual statement, other reporting forms, and electronic data filings with the National Association of Insurance Commissioners (NAIC) necessary to report information concerning the financial condition and business operations and activities of insurers. This section applies to all insurers and other regulated entities authorized to do the business of insurance in this state and includes, but is not limited to, life insurers; accident insurers; life and accident insurers; life and health insurers; accident and health insurers; life, accident and health insurers; mutual life insurers; stipulated premium insurers; group hospital service corporations; fire insurers; fire and marine insurers; U.S. Branch of an alien insurer; Mexican casualty insurers; general casualty insurers; fire and casualty insurers; mutual insurers other than life; statewide mutual assessment companies; local mutual aid associations; mutual burial associations; exempt associations; county mutual insurers; Lloyd's plans; reciprocal and inter-insurance exchanges; domestic risk retention groups; domestic joint underwriting associations; title insurers; fraternal benefit societies; farm mutual insurers; health maintenance organizations; nonprofit health corporations; nonprofit legal services corporations; the Texas Health Insurance Risk Pool; the Texas Mutual Insurance Company; the Texas Windstorm Insurance Association; and the Texas FAIR Plan Association. The commissioner adopts by reference, the 2004 NAIC quarterly statement blanks, the 2004 NAIC annual statement blanks, the related instruction manuals, and other supplemental reporting forms specified in this section. The forms are available from the Texas Department of Insurance, Financial Analysis and Examinations Activity, Mail Code 303-1A, P.O. Box 149104, Austin, Texas 78714-9104. The NAIC annual and quarterly statement blanks and other NAIC supplemental reporting forms can be produced as part of the software available from vendors. Insurers and other regulated entities shall properly report to the department and the NAIC by completing the appropriate annual and quarterly statement blanks, prepared with laser quality print (hand written copies must be prepared legibly using black ink), other reporting forms, and electronic data filings with the NAIC following the applicable specifications.

(b) Definitions. In this section "Texas Edition" refers to the blanks and forms promulgated by the commissioner.

(c) Conflicts with other laws. In the event of a conflict between the Insurance Code, any currently existing departmental rule, form, instructions, or any specific requirement of this section and the NAIC instructions listed in this section, then and in that event, the Insurance Code, the department's promulgated rule, form, instruction, or the specific requirement of subsections of this section shall take precedence and in all respects control.

(d) Filing requirements for life, accident and health insurers. Each life, life and accident, life and health, accident, accident and

health, mutual life, or life, accident and health insurance company, stipulated premium insurance company, group hospital service corporation and the Texas Health Insurance Risk Pool shall complete and file the blanks, forms, or electronic data filings as directed in this subsection. This subsection does not apply to entities licensed as health maintenance organizations under Insurance Code Chapter 843. Insurers described in this subsection and engaged in business authorized under Insurance Code Chapter 843 may have additional reporting requirements under subsection (h) of this section. Insurers described under this subsection that wrote direct health premiums for the calendar year ending December 31, 2004 may elect to file on the NAIC Health statement blank for the three quarters of 2004 and the calendar year 2004 if the insurer wrote 100% of "health premiums" as the lines of business defined in the 2004 NAIC Health Annual Statement Instructions. If a reporting entity qualifies under this subsection to use the health annual statement, it must continue to use that annual statement for a minimum of three years or obtain written approval from the department to change to another type of annual statement. Insurers filing the 2004 NAIC Life, Accident and Health blank and the related NAIC supplemental forms and reports identified in these subsections shall complete filings in accordance with the 2004 NAIC Annual Statement Instructions, Life, Accident and Health. Life insurers meeting the test set forth in this subsection to file the 2004 NAIC Health blank and the related NAIC supplemental forms and reports identified in these subsections shall complete filings in accordance with the 2004 NAIC Health Annual Statement Instructions. The electronic filings of these forms or reports with the NAIC shall be in accordance with the NAIC data specifications and instructions for electronic filing and shall include PDF format filing. The filings for insurers described in this subsection are:

(1) Domestic insurer reports and forms in paper copy to be filed with the department and the NAIC as follows:

(A) 2004 NAIC Life, Accident and Health Annual Statement, including the printed investment schedule detail, due on or before March 1, 2005 (stipulated premium insurance companies, April 1, 2005);

(B) 2004 NAIC Life, Accident and Health Annual Statement of the Separate Accounts for the 2004 calendar year (required of companies maintaining separate accounts), due on or before March 1, 2005;

(C) 2004 NAIC Life, Accident and Health Quarterly Statements, due on or before May 15, August 15, and November 15, 2004. However, a Texas stipulated premium insurance company, unless specifically requested to do so by the department, is not required to file quarterly statements with the department or the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its certificate of authority;

(ii) it collected premiums in the prior calendar year of less than \$1 million; and

(iii) it had a profit from operations in the prior two calendar years.

(D) 2004 Health Annual Statement, including the printed investment schedule detail, due on or before March 1, 2005 if the company qualifies as described in this subsection;

(E) 2004 Health Quarterly Statements, due on or before May 15, August 15, and November 15, 2004 if the company qualifies as described in this subsection;

(F) all the paper copies of the NAIC Annual and Quarterly Supplements (Note: the Schedule SIS and the Supplemental Compensation Exhibit are filed only with the department) prepared and filed on dates described in the NAIC blanks and instructions;

(G) Management's Discussion and Analysis, due on or before April 1, 2005; and

(H) Statement of Actuarial Opinion due on or before March 1, 2005. The Actuarial Opinion shall be prepared in accordance with paragraph (5) of this subsection.

(2) Domestic insurer reports and forms to be filed in paper copy only with the department:

(A) Schedule SIS, Stockholder Information Supplement due on or before March 1, 2005. This filing is also required if filing a Health Annual Statement, as applicable;

(B) Supplemental Compensation Exhibit, due on or before March 1, 2005 (stipulated premium companies, April 1, 2005). This filing is also required if filing a Health Annual Statement, as applicable;

(C) The Texas Health Insurance Risk Pool shall file the 2004 NAIC Life, Accident and Health Annual and 2004 NAIC Quarterly Statements as follows:

(i) 2004 NAIC Life, Accident and Health Annual Statement, with only pages 1 - 5, and Schedule E, Part 1, Part 2, and Part 3 to be completed and filed on or before March 1, 2005; and

(ii) 2004 NAIC Life, Accident and Health Quarterly Statement, with only pages 1 - 5, and Schedule E, Part 1-Cash to be completed and filed on or before May 15, August 15, and November 15, 2004.

(iii) The Texas Health Insurance Risk Pool is not required to file any reports, diskettes, or electronic data filings with the NAIC.

(D) Texas Overhead Assessment Form (Texas Edition), due on or before March 1, 2005 (stipulated premium insurance companies, April 1, 2005);

(E) Analysis of Surplus (Texas Edition) for life, accident and health insurers to be filed on or before March 1, 2005 (stipulated premium insurance companies, April 1, 2005).

(3) Foreign companies filing electronically with the NAIC and not filing a paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(4) Electronic filings with the NAIC by domestic and foreign insurers:

(A) NAIC Annual Statement electronic filing and PDF filing, due on or before March 1, 2005 (stipulated premium insurance companies, April 1, 2005);

(B) NAIC Separate accounts electronic filing and PDF filing, due on or before March 1, 2005;

(C) NAIC Quarterly statement electronic filing and PDF filing, due on or before May 15, August 15, and November 15, 2004. A Texas stipulated premium insurance company, unless specifically requested to do so by the department, is not required to file quarterly electronic data filings with the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its certificate of authority;

(ii) it collected premiums in the prior calendar year of less than \$1 million; and

(iii) it had a profit from operations in the prior two calendar years;

(D) All NAIC annual and quarterly supplemental electronic filings together with the related PDF filings (except for Schedule SIS and Supplemental Compensation Exhibit which are only filed with the department in paper copy) due on the dates specified in the forms and instructions;

(5) Actuarial opinion required by paragraph (1)(H) of this subsection shall be prepared in accordance with the following:

(A) Unless exempted, the statement of actuarial opinion, attached to either the 2004 NAIC Life, Accident and Health Annual Statement or the 2004 NAIC Health Annual Statement, should follow the applicable provisions of §§3.1601 - 3.1611 of this title (relating to Actuarial Opinion and Memorandum Regulation).

(B) For those companies exempted from §§3.1601 - 3.1611 of this title, instructions 1-12, established by the NAIC, must be followed.

(C) Any stipulated premium company subject to §§3.1601 - 3.1611 of this title which does not insure or assume risk on contracts with death benefits, cash value, or accumulation values on any one life in excess of \$15,000, except as permitted by Insurance Code §884.304, is exempt from submission of a statement of actuarial opinion in accordance with §3.1608 of this title (relating to Statement of Actuarial Opinion Based on an Asset Adequacy Analysis), but must submit an actuarial opinion pursuant to §3.1607 of this title (relating to Statement of Actuarial Opinion Not Including an Asset Adequacy Analysis).

(D) Any company required by §3.4505(b)(3)(I) of this title (relating to General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves) to opine on the application of X factors, shall attach this opinion to the 2004 NAIC Life, Accident and Health Annual Statement or the 2004 NAIC Health Annual Statement, as applicable.

(6) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(7) A foreign insurer that is classified as a commercially domiciled insurer under Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for life, accident and health insurers with the department.

(e) Requirements for property and casualty insurers. Each fire, fire and marine, general casualty, fire and casualty, or U.S. Branch of an alien insurer, county mutual insurance company, mutual insurance company other than life, Lloyd's plan, reciprocal or inter-insurance exchange, domestic risk retention group, life insurance company that is licensed to write workers' compensation, any farm mutual insurance company that filed an NAIC property and casualty annual statement for the 2003 calendar year or had gross written premiums in 2004 in excess of \$5,000,000, any Mexican non-life insurer licensed under any article of the Insurance Code other than, or in addition to, Insurance Code Chapter 984, domestic joint underwriting association, the Texas Mutual Insurance Company, the Texas Windstorm Insurance Association, and the Texas FAIR Plan Association shall complete and file the following blanks, forms, and diskettes or electronic data filings as described in this subsection. The forms and reports identified in this subsection shall be completed in accordance with the 2004 NAIC Annual Statement Instructions, Property and Casualty. The electronic filings

with the NAIC shall be in accordance with the NAIC data specifications and instructions and shall include PDF format filing, as applicable. The filings for insurers described in this subsection are:

(1) Domestic insurer reports and forms in paper copy to be filed with the department and the NAIC as follows:

(A) 2004 NAIC Property and Casualty Annual Statement, due on or before March 1, 2005;

(B) 2004 NAIC Property and Casualty Quarterly Statements, due on or before May 15, August 15, and November 15, 2004;

(C) 2004 NAIC Combined Property/Casualty Annual Statement, to be filed on or before May 1, 2005. This statement is required only for those affiliated insurers that wrote more than \$35 million in direct premiums as a group in calendar year 2004, as disclosed in Schedule T of the Annual Statement(s);

(D) all the paper copies of the NAIC Annual and Quarterly Supplements prepared and filed on dates described in the NAIC blanks and instructions. Schedule SIS and the Supplemental Compensation Exhibit are filed only with the department; and

(E) the actuarial opinion submitted shall be prepared in accordance the 2004 NAIC Annual Statement instructions.

(2) Domestic insurer reports and forms to be filed in paper copy only with the department:

(A) Schedule SIS and the Stockholder Information Supplement, due on or before March 1, 2005;

(B) Supplemental Compensation Exhibit, due on or before March 1, 2005;

(C) Texas Overhead Assessment Form (Texas Edition), due on or before March 1, 2005;

(D) Supplement for County Mutuals (Texas Edition) (required of Texas county mutual companies only), due with the 2004 annual statement on or before March 1, 2005;

(E) Texas Supplemental A for County Mutuals (Texas Edition) (required of Texas county mutual companies only), due with the annual statement on or before March 1, 2005; and

(F) Analysis of Surplus (Texas Edition) for property and casualty insurers except Texas county mutual companies, to be filed on or before March 1, 2005.

(G) The Texas Windstorm Insurance Association shall complete and file the following:

(i) 2004 NAIC Property and Casualty Annual Statement, to be filed on or before March 1, 2005;

(ii) 2004 NAIC Property and Casualty Quarterly Statement, to be filed on or before May 15, August 15, and November 15, 2004; and

(iii) Management's Discussion and Analysis, to be filed on or before April 1, 2005.

(iv) The Texas Windstorm Insurance Association is not required to file any reports with the NAIC.

(H) The Texas FAIR Plan Association shall complete and file the following:

(i) 2004 NAIC Property and Casualty Annual Statement, to be filed on or before March 1, 2005;

(ii) 2004 NAIC Property and Casualty Quarterly Statement, to be filed on or before May 15, August 15, and November 15, 2004;

(iii) Actuarial Opinion due on March 1, 2005; and

(iv) Management's Discussion and Analysis, to be filed on or before April 1, 2005.

(v) The Texas FAIR Plan Association is not required to file any reports with the NAIC.

(3) Foreign property and casualty insurers filing only electronically with the NAIC and not filing a paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(4) Electronic filings by domestic and foreign insurers to be filed with the NAIC:

(A) NAIC Annual Statement electronic filing and PDF filing, due on or before March 1, 2005;

(B) NAIC Quarterly statement electronic filing and PDF filing, due on or before May 15, August 15, and November 15, 2004;

(C) All NAIC annual and quarterly supplemental electronic filings together with the related PDF filings (except for electronic Schedule SIS and Supplemental Compensation Exhibit) due on the dates specified in the forms and instructions;

(D) Electronic combined insurance exhibit, due on or before May 1, 2005;

(E) Combined Annual Statement electronic filing and PDF filing due on or before May 1, 2005;

(5) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(6) A foreign insurer that files an application with the department for approval of a policyholder dividend shall file an Analysis of Surplus (Texas Edition) for property and casualty insurers with the application.

(7) A foreign insurer that is classified as a commercially domiciled insurer under Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for property and casualty insurers with the department

(f) Requirements for fraternal benefit societies. Each fraternal benefit society shall complete and file the following blanks, forms, and electronic data filings for the 2004 calendar year and the three quarters for the 2004 calendar year. The forms and reports identified in this subsection shall be completed in accordance with the 2004 NAIC Annual Statement Instructions, Fraternal. The electronic data filings with the NAIC shall be in accordance with the NAIC data specifications and instructions and shall include PDF format filing. The filings for insurers described in this subsection are:

(1) Domestic insurer reports and forms in paper copy to be filed with the department and the NAIC as follows:

(A) 2004 NAIC Fraternal Annual Statement, including the printed investment schedule detail, due on or before March 1, 2005;

(B) 2004 NAIC Fraternal Annual Statement of the Separate Accounts (required of companies maintaining separate accounts), due on or before March 1, 2005;

(C) 2004 Fraternal Quarterly financial statement, due on or before May 15, August 15, and November 15, 2004;

(D) all the paper copies of the NAIC Annual and Quarterly Supplements prepared and filed on dates described in the NAIC blanks and instructions. The Schedule SIS and the Supplemental Compensation Exhibit are filed only with the department.

(2) Domestic insurer paper copy reports and forms to be filed only with the department:

(A) Supplemental Compensation Exhibit, due on or before March 1, 2005;

(B) Texas Overhead Assessment Form (Texas Edition), due on or before March 1, 2005; and

(C) Analysis of Surplus (Texas Edition) for fraternal benefit societies to be filed on or before March 1, 2005.

(3) Foreign fraternal insurers filing only electronically with the NAIC and not filing a paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(4) Electronic filings by domestic and foreign insurers to be filed with the NAIC:

(A) NAIC Annual Statement electronic filing and PDF filing, to be filed on or before March 1, 2005;

(B) NAIC Separate Accounts electronic filing and PDF filing due on or before March 1, 2005;

(C) NAIC Quarterly statement electronic filing and PDF filing, due on or before May 15, August 15, and November 15, 2004;

(D) all NAIC annual and quarterly supplemental electronic filings together with the related PDF filings (except for the Supplemental Compensation Exhibit) due on the dates specified in the forms;

(5) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(6) A foreign insurer that is classified as a commercially domiciled insurer under Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for fraternal benefit societies with the department.

(g) Requirements for title insurers. Each title insurance company shall complete and file the following blanks and forms for the 2004 calendar year and the three quarters of the 2004 calendar year. The reports and forms identified in this subsection shall be completed in accordance with the 2004 NAIC Annual Statement Instructions, Title. The electronic version of the filings with the NAIC identified in this subsection shall be in accordance with the NAIC data specifications and instructions and shall include PDF format filing. The filings for insurers described in this subsection are:

(1) Domestic insurer reports and forms in paper copy to be filed with the department and the NAIC as follows:

(A) 2004 NAIC Title annual statement, including printed investment schedule details, due on or before March 1, 2005;

(B) 2004 Title quarterly statement, due on or before May 15, August 15, and November 15, 2004;

(C) all the paper copies of the NAIC Annual and Quarterly Supplements prepared and filed on dates described in the NAIC

blanks and instructions. The Schedule SIS and the Supplemental Compensation Exhibit are filed only with the department. The Supplemental Schedule of Business Written by Agency is not required.

(D) Management's Discussion and Analysis, due on or before April 1, 2005; and

(E) Statement of Actuarial Opinion due on or before March 1, 2005.

(2) Domestic insurer paper copy filings and reports to be filed only with the department:

(A) Supplemental Compensation Exhibit, due on or before March 1, 2005;

(B) Schedule SIS, Stockholder Information Supplement due on or before March 1, 2005;

(C) Texas Overhead Assessment Form (Texas Edition), due on or before March 1, 2005; and

(D) Analysis of Surplus (Texas Edition) for title companies, to be filed on or before March 1, 2005.

(3) Foreign companies filing electronically with the NAIC and not filing a paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(4) Electronic filings with the NAIC by domestic and foreign insurers:

(A) NAIC Annual Statement electronic filing and PDF filing, due on or before March 1, 2005;

(B) NAIC Title quarterly statement electronic filing and PDF filing, due on or before May 15, August 15, and November 15, 2004;

(C) All NAIC annual and quarterly supplemental electronic filings together with the related PDF filings (except for Schedule SIS and Supplemental Compensation Exhibit which are only filed with the department in paper copy) due on the dates specified in the forms and instructions;

(D) Management Discussion and Analysis, due on or before April 1, 2005; and

(E) Statement of Actuarial Opinion due on or before March 1, 2005;

(5) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(6) A foreign insurer that is classified as a commercially domiciled insurer under Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for title insurers.

(h) Requirements for health maintenance organizations. Each health maintenance organization licensed pursuant to Insurance Code Chapter 843 shall use the NAIC Health blanks to file the 2004 annual and 2004 quarterly information. Insurers that are subject to life insurance statutes and are permitted or allowed to do the business of health maintenance organizations shall file the Texas HMO supplement form as part of their annual and quarterly filings. The NAIC forms and reports required in this subsection shall be completed in accordance with the 2004 NAIC Annual and Quarterly Statement Instructions, Health. The Texas supplemental forms required in this subsection and provided by the department shall be completed in accordance with the instructions on the forms. The actuarial opinion shall include the additional requirements of the department set forth in paragraph (1)(D) of this

subsection. The electronic data filings with the NAIC shall be in accordance with NAIC data specifications and instructions and shall include PDF format filing. The Texas specific electronic filings regarding HMO data requested by the department shall be filed in accordance with the instructions provided by the department. The filings for insurers described in this subsection are as follows:

(1) Domestic and foreign insurer reports and forms in paper copy to be filed with the department and the NAIC:

(A) 2004 NAIC Health Annual Statement, including printed investment schedule detail, due on or before March 1, 2005;

(B) 2004 NAIC Health Quarterly Statements, due on or before May 15, August 15, and November 15, 2004. With each quarterly filing, include a completed copy of Schedule E--part 3--Special Deposits, from the 2004 NAIC Health Annual Statement blank;

(C) Management's Discussion and Analysis, to be filed on or before April 1, 2005; and

(D) Statement of Actuarial Opinion due on or before March 1, 2005. In addition to the requirements set forth in the 2004 NAIC Annual Statement Instructions, Health, the department requires that the actuarial opinion include the following:

(i) The statement of actuarial opinion must include assurance that an actuarial report and underlying actuarial work papers supporting the actuarial opinion will be maintained at the company and available for examination for seven years. The foregoing must be available by May 1 of the year following the year-end for which the opinion was rendered or within two weeks after a request from the commissioner. The suggested wording used will depend on whether the actuary is employed by the company or is a consulting actuary. The wording for an actuary employed by the company should be similar to the following: "An actuarial report and any underlying actuarial work papers supporting the findings expressed in this Statement of Actuarial Opinion will be retained for a period of seven years in the administrative offices of the company and available for regulatory examination." The wording for a consulting actuary retained by the company should be similar to the following: "An actuarial report and any underlying actuarial work papers supporting the findings expressed in this Statement of Actuarial Opinion have been provided to the company to be retained for a period of seven years in the administrative offices of the company and available for regulatory examination."

(ii) Under the scope paragraph requirements of section 5 of the instructions relating to the Actuarial Certification in the 2004 NAIC Annual Statement Instructions, Health, the department requires that the actuarial opinion specifically list the premium deficiency reserve as an item and disclose the amount of such reserve.

(2) Domestic insurer paper copy and Texas specific filings and reports to be filed with the department:

(A) Supplemental Compensation Exhibit, due on or before March 1, 2005;

(B) Texas HMO Supplement (Texas Edition), due on or before May 15, August 15, and November 15, 2004, and March 1, 2005;

(C) department formatted diskettes containing annual statement data (diskettes provided by the department), to be completed according to the instructions provided by the department, due on or before March 1, 2005;

(D) department formatted diskettes containing quarterly statement data (diskettes provided by the department), to be

completed according to the instructions provided by the department, due on or before May 15, August 15, and November 15, 2004; and

(E) Texas Overhead Assessment Form (Texas Edition), due on or before March 1, 2005.

(3) Electronic filings with the NAIC by domestic and foreign insurers.

(A) NAIC Annual Statement electronic filing, and PDF filing, due on or before March 1, 2005;

(B) NAIC Quarterly statement electronic filing and PDF filing, due on or before May 15, August 15, and November 15, 2004;

(C) All NAIC annual and quarterly supplemental electronic filings together with the related PDF filings (except for Schedule SIS and Supplemental Compensation Exhibit which are only filed with the department in paper copy) due on the dates specified in the forms and instructions;

(D) Statement of Actuarial Opinion, due on or before March 1, 2005;

(E) Management Discussion and Analysis due on or before April 1, 2005.

(i) Requirements for farm mutual insurers not subject to the provisions of subsection (e) of this section. Farm mutual insurance companies not subject to subsection (e) of this section shall file the following blanks and forms for the 2004 calendar year with the department only, on or before March 1, 2005:

- (1) Annual statement (Texas Edition);
- (2) Texas Overhead Assessment Form (Texas Edition); and
- (3) Statement of Actuarial Opinion, unless otherwise exempted.

(j) Requirements for statewide mutual assessment associations, local mutual aid associations, mutual burial associations and exempt associations. Each statewide mutual assessment association, local mutual aid association, mutual burial association and exempt association shall complete and file the following blanks and forms for the 2004 calendar year with the department only, on or before April 1, 2005:

(1) Annual Statement (Texas Edition) (exempt companies are required to complete all pages except lines 22, 23, 24, 25, and 26 on page 3, the special instructions at the bottom of page 3, and pages 4 - 7);

(2) Texas Overhead Assessment Form (Texas Edition);

(3) Release of Contributions Form (Texas Edition);

(4) 3 1/2% Chamberlain Reserve Table (Reserve Valuation) (Texas Edition);

(5) Reserve Summary (1956 Chamberlain Table 3 1/2%) (Texas Edition);

(6) Inventory of Insurance in Force by Age of Issue or Reserving Year (Texas Edition); and

(7) Summary of Inventory of Insurance in Force by Age and Calculation of Net Premiums (Texas Edition).

(k) Requirements for Non-profit Legal Service Corporations. Each non-profit legal service corporation doing business as authorized by a certificate of authority issued under Chapter 961 shall complete and file the following blanks and forms for the 2004 calendar year with

the department only. An actuarial opinion is not required. The following forms are to be filed on or before March 1, 2005:

- (1) Annual Statement (Texas Edition); and
- (2) Texas Overhead Assessment Form (Texas Edition).

(l) Requirements for Mexican casualty companies. Each Mexican casualty company doing business as authorized by a certificate of authority issued under the Insurance Code Chapter 984, shall complete and file the following blanks and forms for the 2004 calendar year with the department only. All submissions shall be printed or typed in English and all monetary values shall be clearly designated in United States dollars. The form identified in paragraph (1) of this subsection shall be completed in accordance with the 2004 NAIC Annual Statement Instructions, Property and Casualty, except as provided by this subsection. An actuarial opinion is not required. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code. The following blanks or forms are to be filed on or before March 1, 2005:

(1) 2004 NAIC Property and Casualty Annual Statement; provided, however, only pages 1 - 4, and 110 (Schedule T) are required to be completed;

(2) a copy of the balance sheet and the statement of profit and loss from the Mexican financial statement (printed or typed in English);

(3) a copy of the official documents issued by the COMISION NACIONAL DE SEGUROS Y FIANZAS approving the 2004 Annual Statement; and

(4) a copy of the current license to operate in the Republic of Mexico.

(m) Other financial reports. Nothing in this section prohibits the department from requiring any insurer or other regulated entity from filing other financial reports with the department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 28, 2005.

TRD-200500890

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: March 20, 2005

Proposal publication date: December 24, 2004

For further information, please call: (512) 463-6327



TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS-ACTIVECARE)

34 TAC §41.42

The Teacher Retirement System of Texas (TRS) adopts amendments to §41.42 concerning payment of supplemental compensation. The proposed amendments are adopted without changes to the text as published in the January 7, 2005, issue of the *Texas Register* (30 TexReg 17) and therefore will not be republished.

The amendments update the section in light of the discontinuation of TRS's health reimbursement account (HRA) program and primarily address the definitions of terms used in the section. Effective beginning with fiscal year 2005, the amendments change the term "professional employee" to "professional staff" but continue to apply the same definition to the renamed term. The amendments also specify which entities are affected by the rule and fully define full-time and part-time employees rather than referring to definitions in prior statutes.

The HRA program was to go into effect on September 1, 2004, and the definitions of the appropriate terms were contained in those rules. However, the HRA program was discontinued effective September 1, 2004, requiring that the definitions be made applicable to the supplemental compensation program for fiscal year 2005 and that certain terms be fully defined so that the supplemental compensation can be paid to eligible employees during fiscal year 2005.

No comments on the proposal were received.

The amendments are adopted under Chapter 825, §825.102, Government Code, which authorizes the TRS Board of Trustees to adopt rules for, among other things, the transaction of business of the board. The amendments are also adopted under House Bill 1, 78th Legislature, Regular Session, which defines the supplemental compensation program effective September 1, 2004.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2005.

TRD-200501044

Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

Effective date: March 27, 2005

Proposal publication date: January 7, 2005

For further information, please call: (512) 542-6438



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 29. PRACTICE AND PROCEDURE

37 TAC §§29.11, 29.24, 29.27, 29.29

The Texas Department of Public Safety adopts amendments to §§29.11, 29.24, 29.27, and 29.29, concerning Practice And Procedure, without changes to the proposed text as published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11561) and will not be republished.

The amendment to §29.11 is necessary in order to make the department's rule on the deadline for answers to pleadings in cases transferred to the State Office of Administrative Hearings (SOAH) consistent with discovery deadlines.

The amendment to §29.24 is necessary in order to clarify that Requests for Disclosure, authorized by the Texas Rules of Civil Procedure and SOAH rules are also authorized under Department Discovery Rules.

A second amendment to §29.24 is necessary in order to make the department discovery deadline rule for cases referred to SOAH consistent with SOAH discovery deadline rule.

A third amendment to §29.24 is necessary in order to make the department rules on filing discovery with SOAH consistent with SOAH rules on filing discovery.

The amendment to §29.27 is necessary in order to streamline the process of issuing a final order of the director when a party fails to appear at a contested case hearing scheduled at SOAH.

The amendment to §29.29 is necessary in order to clarify that partial payments received against an order assessing an administrative penalty as well as costs and fees will be applied first to the costs and fees before being applied to the administrative penalty.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 3, 2005.

TRD-200500979

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Effective date: March 23, 2005

Proposal publication date: December 17, 2004

For further information, please call: (512) 424-2135



CHAPTER 35. PRIVATE SECURITY

SUBCHAPTER E. GENERAL ADMINISTRATION AND EXAMINATIONS

37 TAC §35.76

The Texas Department of Public Safety adopts new §35.76, concerning General Administration and Examinations, with changes to the proposed text as published in the December 10, 2004, issue of the *Texas Register* (29 TexReg 11460) and will be republished.

Adoption of the new section is necessary in order to provide for private businesses investigating persons or the affairs of a person, not an employee of the private business to be licensed as an investigations company or hire a licensed investigations company to conduct the investigations.

The department received numerous comments from private businesses regarding proposed §35.76. A summary of the comments as well as the department's response follows:

Comment: The comments received indicate that §35.76 expands on the statutory requirements of Occupations Code, §1702.323(e) because the rule does not contain the statutory language regarding the requirement that the investigation occur off the premises of the business. The comments also indicate that §35.76 will have a fiscal impact on the department and on private businesses.

Response: §35.76 was not intended to repeat the statutory requirements of Occupations Code, §1702.323(e), which are clearly stated in statute. Rather, the purpose of §35.76 is to clarify that affected businesses may comply with the statutory requirements of §1702.323(e) either by licensing their investigators or by hiring a licensed investigator to perform investigations for which licensing is required by §1702.323(e). The department agrees that the rule as written could cause confusion by private businesses as to when licensing is required by §1702.323(e), and has therefore amended the rule from that which was previously proposed.

With regard to the comments concerning the fiscal impact of the rule, the department notes that any fiscal impact on the department or private businesses is a direct result of the statutory requirements of §1702.323(e), and not of the proposed rule, which does not impose any additional requirements.

The new section is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

§35.76. *Investigations by Security Department of Private Businesses.*

All businesses that conduct investigations involving persons, or the affairs of persons, who are not employees of the business are required to be licensed as an investigations company or hire a licensed investigations company to conduct the investigation into the affairs of the person not employed by the business if the investigations are performed off the premises of the business, as defined by the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 3, 2005.

TRD-200500977

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Effective date: March 23, 2005

Proposal publication date: December 10, 2004

For further information, please call: (512) 424-2135



SUBCHAPTER U. LOCKSMITH

37 TAC §35.313

The Texas Department of Public Safety adopts new §35.313, concerning Locksmith, without changes to the proposed text as published in the December 10, 2004, issue of the *Texas Register* (29 TexReg 11460) and will not be republished.

Adoption of the section is necessary in order to provide an exception for companies and individuals that install electronic access control devices intended only for the unrestricted access and convenience to the general public such as automatic pedestrian doors.

No comments were received regarding adoption of the new section.

The new section is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 3, 2005.

TRD-200500978

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Effective date: March 23, 2005

Proposal publication date: December 10, 2004

For further information, please call: (512) 424-2135



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 7. TEXAS COUNCIL ON PURCHASING FROM PEOPLE WITH DISABILITIES

CHAPTER 189. PURCHASES OF PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES

40 TAC §189.7

The Texas Council on Purchasing from People with Disabilities (the Council) adopts amendments to Texas Administrative Code, Title 40, Part 7, Chapter 189, §189.7, concerning the annual review of the management fee charged by the Central Nonprofit Agency (CNA) in the state use program. The amendments are adopted without changes to the proposed text as published in the January 14, 2005, issue of the *Texas Register* (30 TexReg 71). The amendments are adopted under Human Resources Code §122.030 which requires the Council to adopt rules to implement a formal process for the annual review of the management fee charged by the CNA.

The amendments are required to comply with the requirements of Senate Bill 261 enacted by the 78th Texas Legislature. Senate Bill 261 added §122.030 to the Human Resources Code which directs the Council to adopt rules to implement an annual review of the CNA's management fee that is charged to community rehabilitation programs that participate in the state use program.

The amendments also clarify that the review of the CNA's services will be made annually.

The amendments establish a process that includes the solicitation of public comment concerning the management fee prior to any action by the Council to adopt or modify the management fee. The rule requires that the CNA provide documentation in support of any change in the management fee. The rule further provides that any information submitted by the CNA in support of a proposed change in the management fee is available to the public upon request.

The proposal was published for public comment. No comments were received.

The amendments are adopted under the authority of the Texas Human Resource Code, Title 8, Chapter 122, §122.030.

The following code is affected by the amendments: §122.019

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 3, 2005.

TRD-200500967

Margaret Pfluger

Chairman

Texas Council on Purchasing from People with Disabilities

Effective date: March 23, 2005

Proposal publication date: January 14, 2005

For further information, please call: (512) 463-3244



PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER E. INTAKE, INVESTIGATION, AND ASSESSMENT

40 TAC §700.522

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §700.522, concerning audiotaping or videotaping interviews with alleged victims, in its Child Protective Services chapter, without changes to the proposed text published in the October 15, 2004, issue of the *Texas Register* (29 TexReg 9632). Texas Family Code, §261.302(e) requires DFPS to audiotape or videotape interviews with children alleged to be victims of physical or sexual abuse, unless good cause exists for not doing so.

The justification for the amendment is to limit the circumstances under which good cause may exist. The number of good cause exceptions will decrease from eight to four.

The amendment will function by ensuring that the statements of children about whether they have been physically or sexually abused will be preserved on audiotape or videotape, which can be used as evidence to support actions to remove the child, offer services to the family while the child remains in the home, or close the case.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes FPS to propose and adopt rules to facilitate implementation of Department programs.

The amendment implements HRC, §40.029.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2005.

TRD-200501008

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: May 1, 2005

Proposal publication date: October 15, 2004

For further information, please call: (512) 438-3437

◆ ◆ ◆

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

Texas Real Estate Commission

Title 22, Part 23

TRD-200500960

Filed: March 2, 2005



Proposed Rule Reviews

Credit Union Department

Title 7, Part 6

The Texas Credit Union Commission will review and consider Chapter 91, §§ 91.101 (Definitions and Interpretations), 91.103 (Public Notice of Department Activities), 91.104 (Notice of Applications), 91.105 (Applications for Authorization from the Commissioner), 91.110 (Protest Procedures for Applications), 91.115 (Safety at Unmanned Teller Machines), 91.120 (Posting of Notice Regarding Certain Loan Agreements), 91.201 (Incorporation Procedures), 91.202 (Form of Bylaws; Amendments to Articles of Incorporation and Bylaws), 91.205 (Use of Credit Union Name), 91.206 (Underserved Area Credit Unions - Secondary Capital Accounts), 91.209 (Reports and Charges for Late Filing), 91.210 (Foreign Credit Unions), 91.1003 (Mergers/Consolidations), 91.1004 (Conversion of Charter), 91.1110 (Share and Deposit Guaranty Requirements), 91.3001 (Opportunity to Submit Comments on Certain Applications), and 91.3002 (Conduct of Meetings to Receive Comments) of Title 7, Part 6 of the Texas Administrative Code in preparation for the Credit Union Commission's Rule Review as required by Section 2001.039, Government Code.

Comments or questions regarding these rules may be submitted in writing to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or electronically to Kerri.Galvin@tcud.state.tx.us.

TRD-200501004

Harold E. Feeney

Commissioner

Credit Union Department

Filed: March 7, 2005



Texas State Library and Archives Commission

Title 13, Part 1

The Texas State Library and Archives Commission files this notice of intention to review 13 TAC Part 1, Chapter 8, concerning the

TexShare Library Consortium, in accordance with Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years.

The rules were adopted pursuant to the Government Code, §441.225(b), which permits the Texas State Library and Archives Commission to adopt rules to govern the operation of the consortium. The rules are necessary to carry out the statutory obligations of the Texas State Library and Archives Commission for the establishment and maintenance of the TexShare consortium.

Comments on the commission's review of its rules in Chapter 8 may be directed to Beverley Shirley, Director, Library Resource Sharing Division, Box 12927, Austin, Texas 78711-2927. For further information or questions concerning this proposed rule review, please contact Ms. Shirley at (512) 463-5433 or at bshirley@tsl.state.tx.us.

TRD-200500965

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

Filed: March 3, 2005



Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) re-files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 68, Elimination of Architectural Barriers. The initial intent to review was published in the January 3, 2003, issue of the *Texas Register* (28 TexReg 371). This review is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

As required by Texas Government Code, §2001.039, any questions or written comments pertaining to this rule review may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, P. O. Box 12157, Austin, Texas 78711, facsimile-(512) 475-3032, or by e-mail, caroline.jackson@license.state.tx.us. The deadline for comments is thirty days after publication in the *Texas Register*.

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption

or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

16 TAC §68.1. -Authority

16 TAC §68.10. Definitions

16 TAC §68.20. Buildings and Facilities Subject to Compliance with the Texas Accessibility Standards

16 TAC §68.30. Exemptions

16 TAC §68.31. Variance Procedures

16 TAC §68.50. Submission of Construction Documents

16 TAC §68.51. Review of Construction Documents

16 TAC §68.52. Inspections

16 TAC §68.53. Corrective Modifications Following Inspection

16 TAC §68.54. Notice of Substantial Compliance

16 TAC §68.65. Advisory Committee

16 TAC §68.70. Registered Accessibility Specialists--Qualifications for Certification

16 TAC §68.74. Registration Requirements--Renewal

16 TAC §68.75. Responsibilities of the Registered Accessibility Specialist

16 TAC §68.76. Standards of Conduct for the Registered Accessibility Specialist

16 TAC §68.79. Contract Providers

16 TAC §68.80. Fees

16 TAC §68.90. Administrative Sanctions or Penalties

16 TAC §68.93. Complaints, Investigations, and Audits

16 TAC §68.100. Technical Standards and Technical Memoranda

16 TAC §68.101. State Leases

16 TAC §68.102. Public Right-of-Way Projects

16 TAC §68.103. Detention and Correctional Facilities

TRD-200501060

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: March 8, 2005



The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 74, Elevators, Escalators, and Related Equipment. This review is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

As required by Texas Government Code, §2001.039, any questions or written comments pertaining to this rule review may be submitted to

Caroline Jackson, Legal Assistant, General Counsel's Office, P.O. Box 12157, Austin, Texas 78711, facsimile (512) 475-3032, or by e-mail, caroline.jackson@license.state.tx.us. The deadline for comments is thirty days after publication in the *Texas Register*.

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

16 TAC §74.1. Authority

16 TAC §74.10. Definitions

16 TAC §74.20. Inspector Registration Requirements

16 TAC §74.25. Contractor Registration Requirements

16 TAC §74.30. Exemptions

16 TAC §74.50. Reporting Requirements--Building Owner

16 TAC §74.55. Reporting Requirements--Inspector

16 TAC §74.60. Standards of Conduct for Inspector or Contractor Registrants

16 TAC §74.65. Advisory Board

16 TAC §74.70. Responsibilities of the Building Owner

16 TAC §74.75. Responsibilities of the Inspector

16 TAC §74.80. Fees

16 TAC §74.85. Responsibilities of the Department

16 TAC §74.90. Sanctions

16 TAC §74.100. Technical Requirements

TRD-200501061

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: March 8, 2005



Texas Workers' Compensation Commission

Title 28, Part 2

The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in Chapter 108, §108.1, concerning Charges for Copies of Public Information. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The agency's reason for adopting the following rule contained in this chapter continues to exist and it proposes to readopt this rule:

§108.1. Charges for Copies of Public Information.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on April 18, 2005, and submitted to Linda Velasquez, Legal Services, MS 4-D, Texas Workers' Compensation Commission, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200500987

Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: March 4, 2005



Adopted Rule Reviews

Texas Certified Self-Insurer Guaranty Association

Title 28, Part 3

In accordance with the requirement of Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years, and pursuant to the notice of intention to review published in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11101), the Texas Certified Self-Insurer Guaranty Association (Association) has assessed whether the reason for adopting or readopting this rule continues to exist.

No comments were received regarding the review of this rule.

As a result of the review, the Texas Certified Self-Insurer Guaranty Association has determined that the reason for adoption of this rule continues to exist. Therefore, the Association readopts Chapter 181.

CHAPTER 181 - BYLAWS

§181.1. Bylaws of the Texas Certified Self-Insurer Guaranty Association.

TRD-200501032
Judy Roach
Executive Director
Texas Certified Self-Insurer Guaranty Association
Filed: March 7, 2005



Texas State Library and Archives Commission

Title 13, Part 1

The Texas State Library and Archives Commission has completed the review of 13 TAC Part 1, Chapter 3, concerning the State Publications Depository Program, in accordance with the requirements of Government Code, §2001.039. Notice of the review was published in the October 8, 2004, issue of the *Texas Register* (29 TexReg 9561).

The commission finds that the reasons for the adoption of the rules in Title 13, Chapter 3, continue to exist. The rules were adopted pursuant to the Government Code, §441.102(a), which requires the Texas State Library and Archives Commission to adopt policies to ensure the distribution of state publications to depository libraries; Government Code, §441.103(b), which requires the Texas State Library and Archives Commission to adopt policies to ensure the acquisition of state publications from state agencies and institutions of higher education; Government Code, §441.104(7) - (9), which requires the Texas

State Library and Archives Commission to adopt policies to provide indexes of and electronic access to all state publications in electronic format, and Government Code, §441.010(b), which establishes an electronically searchable central grant database. The rules are necessary to carry out the statutory obligations of the Texas State Library and Archives Commission for the establishment and maintenance of a state publications depository program.

The commission readopts Chapter 3 in accordance with the Government Code, §2001.039. No comments were received regarding the review of the chapter. Staff review, however, indicates that the chapter should be restructured in order to enhance clarity, that terminology needs to be updated, and that amendments are required to bring rules in line with current practices. Therefore, this readoption is temporary, pending a proposed repeal and adoption of restructured and updated rules for the program.

TRD-200500963
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Filed: March 3, 2005



The Texas State Library and Archives Commission has completed the review of rules in 13 TAC Part 1, Chapter 6, concerning the management, retention, microfilming, and electronic storage of state agency records and fee schedules for the commission's imaging and records storage services. Notice of the review was published in the October 29, 2004, issue of the *Texas Register* (29 TexReg 10145).

The commission readopts §§6.1 - 6.10, 6.21 - 6.35, 6.91 - 6.99, and 6.121 - 6.123 of the chapter in accordance with the Government Code, §2001.039. As a result of the review, the commission is adopting amendments to §§6.2 - 6.7, 6.9, and 6.10, relating to records retention scheduling by state agencies, in a separate action.

The commission finds that the reasons for the adoption of the rules in Title 13, Chapter 6 continue to exist. They allow the commission to fulfill its statutory obligations in the management of state records and for state agencies to meet the requirements of the Government Code, Subchapter K, relating to the preservation and management of state records. The commission did not receive any comments on its review of the rules in Chapter 6.

TRD-200500964
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Filed: March 3, 2005



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §203.16(c)(2)

Date _____ - _____ - _____
Time Started _____ : _____ am pm
Time Ended _____ : _____ am pm

Treatment to proceed on basis of:
 _____ signed authorization _____ oral authorization
 _____ statutory 3-hr attempt to secure _____ Name & location where embalming procedure was performed: _____
 _____ orders from _____

Deceased _____ Mortuary _____
 Age c. _____ yrs. Race _____ Sex: ☐ male ☐ female Weight c. _____ lbs. Height c. _____ ft. _____ in.
 Date of death _____ Time _____ : _____ am pm Time of removal _____ : _____ am pm Date: _____ - _____ - _____
 Physician _____ Place of death _____
 Cause of death _____ ☐ Pending death certificate
 Contributory _____ Duration _____

PRE-EMBALMING OBSERVATIONS

Operation before death? ☐ No ☐ Yes Type/Area _____
 Autopsy performed? ☐ No ☐ Yes ☐ Complete ☐ Trunk ☐ Cranial ☐ Before embalming ☐ After embalming
 Viscera: ☐ Retained ☐ Received
 Time between death and treatment: c. _____ hrs. Time between receipt of remains and treatment: c. _____ hrs.
 Body: ☐ Warm ☐ Cold ☐ Refrigerated: Duration c. _____ hrs. ☐ Thawed c. _____ hrs.
 Rigor mortis: ☐ Slight ☐ Moderate ☐ Intense ☐ Generalized ☐ in; _____
 Abdominal distension: ☐ No ☐ Yes ☐ Slight ☐ Moderate ☐ Intense ☐ Liquid ☐ Gas
 Purge before embalming: ☐ No ☐ Yes Type: _____
 Edema: ☐ Abdomen ☐ Thorax ☐ R. Leg ☐ L. Leg ☐ R. Arm ☐ L. Arm ☐ Face Degree _____
 Discolorations: ☐ Lividity ☐ Stain _____ in; _____
 Lesions: _____
 Comments: _____

EMBALMING PROCEDURE

Arteries Injected:		Veins Drained:		Disinfection: (Check Appropriate Areas)	
Cm. Carotid	R-L _____ Iliac R-L _____	Internal Jugular	R-L _____	Eyes	Other body orifices _____
Subclavian	R-L _____ Femoral R-L _____	Axillary	R-L _____	Mouth	Nose _____
Axillary	R-L _____ Radial R-L _____	Iliac	R-L _____	Body orifices packed	_____
Brachial	R-L _____ Dorsalis pedis R-L _____	Femoral	R-L _____	Remains bathed with antiseptic soap	_____
Others _____		Others _____			

Condition of Arteries: _____ Veins: _____

Injection:			
pre-injection (co-injection)	1 st _____ gal.	2 nd _____ gal.	3 rd _____ gal.
arterial concentrate _____ (%)	1 st _____ oz.	2 nd _____ oz.	3 rd _____ oz.
arterial concentrate _____ (%)	1 st _____ oz.	2 nd _____ oz.	3 rd _____ oz.
fluid modifier _____	1 st _____ oz.	2 nd _____ oz.	3 rd _____ oz.
humectant _____	1 st _____ oz.	2 nd _____ oz.	3 rd _____ oz.
other _____	1 st _____ oz.	2 nd _____ oz.	3 rd _____ oz.

Injection Method: ☐ Continuous ☐ Alternate
Drainage: ☐ Intermittent ☐ Continuous
 Quantity of Drainage _____ Quality: ☐ Heavy clots ☐ Medium ☐ Light ☐ None
Cavity Treatment:
 Cavity fluid _____ (%) Quantity used _____ oz. Method: ☐ Gravity ☐ Motorized ☐ Delayed ☐ Immediate

Autopsied cases: ☐ Viscera immersed ☐ Preservative powder used ☐ Additional treatment: _____

Other: ☐ Direct ☐ Topical ☐ Hypodermic Treatment (Check Appropriate Areas): ☐ Arms ☐ Torso ☐ Face ☐ Legs ☐ Neck
 Distribution Exceptions _____
 Additional Treatment _____

Condition of Body at Completion (include comments on conditions noted above) _____

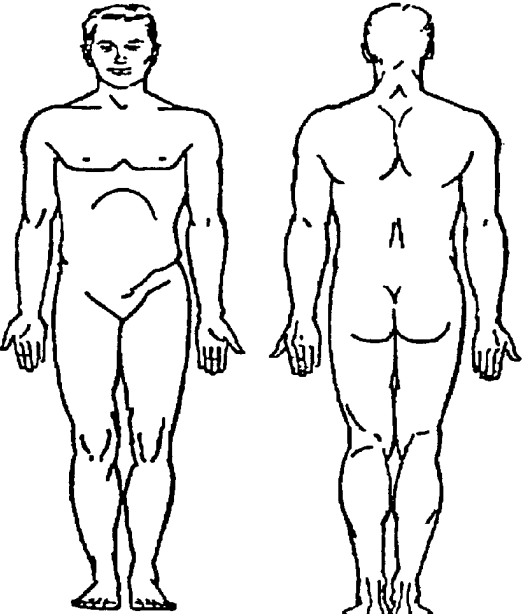
Posing Features

Mouth Closure: ☐ Suture ☐ Needle Injection ☐ Natural ☐ Dentures ☐ Cotton ☐ Other _____

Eye Closure: ☐ Cotton ☐ Eye Caps ☐ Other _____

IDENTIFICATION AND TREATMENT REFERENCE

Indicate on chart all identifying scars, incisions, lesions and special body characteristics.

<p>Description of items marked on chart:</p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p>4. _____</p> <p>5. _____</p> <p>6. _____</p> <p>7. _____</p> <p>8. _____</p>	
--	--

PROPERTY RECORD:

Personal property received with body. List all items received.

Clothing _____

Jewelry _____

Money _____ Papers _____

Other Items _____

Above Received By _____

Disposition of Personal Property _____

OBSERVATIONS:

☐ I hereby certify that the statutory authorization to embalm was properly executed and available prior to this embalming process.

☐ I hereby certify that oral authorization to embalm was obtained prior to this embalming process.

☐ I hereby certify that authority to embalm was sought diligently.

_____ License No. _____

Embalmer

_____ Provisional License No. _____

Student or Provisional Licensee

E. g. "housekeeping" post-embalming checklist (re-aspirated, dressed, etc.)

Figure: 22 TAC §575.26

OFFICE USE ONLY: Assigned To: _____
By: _____
Date: _____ Log: _____

TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS
333 Guadalupe, Tower III [H], Suite 810 [330]
Austin, Texas 78701-3942 [78701-3998]
COMPLAINT FORM

Please fill out this form completely and legibly. Provide as much detail as possible and list events in chronological order with dates and times noted where appropriate. Use black ink or a typewriter. A copy of the complaint may be provided to the veterinarian [Veterinarian] involved in your complaint. You may also be called to testify in a deposition or before an Administrative Law Judge. Hearing impaired persons [Persons] requiring auxiliary aids or services in filing a complaint should call [contact Judy Smith in the Board office by writing to the Board address listed above, or calling] Relay Texas 1-800-735-2980-TDD. Other persons desiring assistance should write the Board at the above address or call the Board at 512-305-7555.

Your Name Name of Veterinarian you are complaining about

Address Address

City City

State Zip State Zip

Home Phone Work Phone Phone

Name of Veterinary Opinion Address Phone

Name of Veterinary Opinion Address Phone

Animal Name Species Age

THE STATEMENTS CONTAINED ON THIS FORM AND ANY ATTACHMENTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Signature Date

(Reverse side of form)

Nature of Complaint

Clearly indicate the nature of your complaint and enclose copies of any records or reports from any other source(s) which will support your statement.

[illegible]

(Attach additional sheets if necessary.)

Figure: 37 TAC §439.17

<u>Recommended Hours</u>	<u>No. Questions</u>	<u>Maximum No. Pilot Questions</u>	<u>Time Allowed</u>
30 or less	25	5	30 minutes
31 - 100	50	5	1 hour
101 - 200	75	10	1.5 hours
201 - 300	100	15	2 hours
301 - 400	125	20	2.5 hours
401 or more	150	25	3 hours

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of February 18, 2005, through March 3, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on March 9, 2005. The public comment period for these projects will close at 5:00 p.m. on April 8, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: Galveston County Parks Department; Location: The project is located along Clear Creek, within Walter Hall Park, in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: League City, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 296044; Northing: 3266750. Project Description: The applicant proposes to construct 750 linear feet of shoreline stabilization using riprap. The area of fill below the ordinary high water mark will be 0.24 acre. The proposed volume of fill will be 1,162 cubic yards. The riprap will extend 20 feet out into Clear Creek. The applicant is also proposing to construct 350 linear feet of pier/boardwalk over the riprap. CCC Project No.: 05-0140-F1; Type of Application: U.S.A.C.E. permit application #23588 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Velasco Drainage District; Location: The project is located in the Dow freshwater canal, at the approach and discharge channels, approximately 0.8 miles southwest of the intersection of Sycamore Street and SH 288, in Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Lake Jackson, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 262476; Northing: 3210706. Project Description: The applicant proposes to discharge approximately 500 cubic yards of fill into waters of the U.S. and excavate 4,307 cubic yards of sand and clay to expand the existing Clute-Lake Jackson pump station by installing 4 additional pumps, 8-foot-diameter discharge pipes, and concrete flow attenuation structures. Temporary cofferdams will also be placed within the approach and discharge channels during construction. The additional pumps and the 3 existing pumps will have a total discharge rate of 1.95 million gallons per minute (gpm), or approximately 260,000 gpm/pump. Direct impacts from the project include the excavation of 0.06 acre of jurisdictional wetlands and 0.45 acre of open waters.

Based on a preliminary jurisdictional determination, it appears that a total of approximately 400 square feet of two isolated wetlands will be filled during placement of the excavated material. The project will result in a net increase of open water by 1.29 acres, mostly as a result of the excavation of uplands on the approach channel.

CCC Project No.: 05-0144-F1; Type of Application: U.S.A.C.E. permit application #11176(02) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Compass Port, LLC; Location: The project involves two properties. The first, a 101-acre fabrication site is located on the property of Kiewit Offshore Services (KOS) along the La Quinta Channel and Jewel Fulton Canal in the northeast portion of Corpus Christi Bay, Ingleside, San Patricio County, Texas. The fabrication site project can be located on the U.S.G.S. quadrangle map entitled: Port Ingleside, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 673500; Northing: 3082455. The second site (placement site), is a 38-acre site located approximately one mile north of the existing developed KOS fabrication facility in the City of Ingleside, San Patricio County, Texas. The placement site project can be located on the U.S.G.S. quadrangle maps entitled: Port Ingleside, Texas and Aransas Pass, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 674380; Northing: 3084125. Project Description: The applicant proposes to construct a casting basin adjacent to the La Quinta Channel to facilitate the construction of two Gravity-Based Structures (GBS's) associated with the construction of an offshore LNG facility. Construction of the GBS's would require flooding the casting basin; thereby creating approximately 24 acres of waters of the United States that would be filled in and restored to pre-project elevations upon completion of the project. The LNG facility would be located in the Gulf of Mexico, approximately 11 miles south of Dauphin Island, Alabama. Construction of the Compass Port offshore LNG facility and associated pipelines is being evaluated by the USACE Mobile District.

The proposed GBS fabrication site is a 101-acre area, on KOS's property, adjacent to the La Quinta Channel. Construction of the casting basin would consist of mechanically excavating a basin that is 45 feet below Mean Sea Level. The basin would be of sufficient size to accommodate the construction of two GBS's within the basin. The casting basin would have approximate dimensions of 960 feet by 505 feet at the bottom of the basin. The sides of the basin would be sloped at about 2H:1V. The top of the basin's cut would be approximately 1250-by 850-feet.

During GBS construction, the basin would be separated from the La Quinta Channel by a low-permeability cement/bentonite slurry bund wall. It will be necessary to continually de-water the casting basin. Dewatering equipment will operate during the GBS construction to remove water inflow into the basin. Discharge from dewatering pumps will be directed to a settling pond located on the site prior to discharge into local waterways. The site's storm water drainage also will be routed through the settling pond. The dimensions of the settling pond would be approximately 615- by 520-feet.

About 1.8 million cubic yards of soil would be excavated from the basin area and approximately 33,000 cubic yards of material would be excavated from the settling/retention pond. The applicant proposes to place the excavated material in a 38-acre placement site located approximately one-half mile north of the proposed fabrication site. Excavated material would be transported via trucks to a placement area approximately one-half mile to the north. The proposed 38-acre disposal site is a mixture of scrub-shrub, mesquite-dominant uplands and geographically isolated herbaceous wetlands. The proposed 38-acre disposal site would require site preparation such as the construction of levees.

Upon completion of the casting basin and ancillary facilities, two GBS's will be fabricated within the casting basin. Following construction, the casting basin would be flooded with water from the adjacent waterway, effectively "floating" the GBS's. When the GBS's are ready for transportation, the bund wall will be dredged, exposing the casting basin to the adjacent waterway. Tugboats will then maneuver the GBS's out of the casting basin, into the shipping channel, and out to sea for installation at Compass Port.

The applicant proposes to remove/dredge the bund wall and the area between the existing shoreline and the La Quinta Channel by hydraulically dredging it to provide the required clearance for the float-out. The estimated volume of material that would need to be excavated is approximately 700,000 cubic yards. This volume includes the removal of the entire bund wall (approximately 200,000 cubic yards), including the slope inside the casting basin. The wet dredge material would be hydraulically transported to Dredge Material Placement Area 13, or Berry Island, both of which are authorized placement areas.

Dredging between the La Quinta Channel and the existing shoreline has already been authorized under Department of the Army (DA) Permit 22302; however, the work has not been completed. On August 31, 2001, the Galveston District of the USACE issued DA Permit 22302 to KOS for the construction of a 3,500-foot bulkhead, the placement of 340 linear feet of riprap revetment along the La Quinta Channel and dredge area of 50.9 acres. To date, approximately 1,900 feet of the bulkhead and adjacent filling and dredging has been completed. The remaining construction of approximately 1,500 feet of bulkhead and associated dredge and fill activities has not been completed.

On August 26, 2002, DA Permit 22302 was amended to widen a section of the La Quinta Channel and deepen a portion of the Kiewit Basin through the dredging of approximately 500,000 cubic yards of material. The area immediately in front of the casting basin would be dredged in accordance with existing DA Permit 22302 and its amendment. All mitigation associated with the dredge and fill activities adjacent to La Quinta Channel have been successfully completed.

Following the GBS float-out, the applicant proposes to demobilize all fabrication materials associated with the proposed Compass Port Project, fill the casting basin to its original grade and elevation, and replant the area with native vegetation. The proposed 38-acre disposal site would be revegetated as required by the landowner. The required time for utilization of the site will be approximately 4 years from permitting through site closure.

CCC Project No.: 05-0147-F1; Type of Application: U.S.A.C.E. permit application #13093(02) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Galveston Bay Foundation; Location: The project is located along the West Galveston Bay shoreline at the north end of 103rd Street on Galveston Island in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Virginia Point,

Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 317228; Northing: 3239483 to Easting: 315826; Northing: 3238904. Project Description: The applicant proposes to construct a 3,557-linear-foot cement-bag breakwater near the shoreline to prevent ongoing shoreline erosion adjacent to the Galveston Bay Foundation preserve and to create/enhance marine habitat (intertidal marsh, sea-grass, oyster reef) components in the project area. Approximately 790 cubic yards of cement bags would be discharged, covering approximately 0.13 acres of bay bottom. CCC Project No.: 05-0149-F1; Type of Application: U.S.A.C.E. permit application #23637 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: Queen Isabel Inn; Location: The project is located on the west shoreline of Laguna Madre, and the foreshore area of the Queen Isabel Hotel, approximately 500 to 650 feet southeast of the Queen Isabella Causeway, Port Isabel, Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Isabel, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 679601; Northing: 2885316. Project Description: The applicant proposes to modify Department of Army Permit 19925(01) by installing 16 finger piers that measure 3 feet wide and vary in length from 19 to 30 feet. The finger piers will service fifteen proposed boat slips for recreational watercraft owned by hotel patrons. Each boat slip will be dredged by a land-based dragline to three feet below the existing bay bottom. Dredged material is to be placed on adjacent uplands that are located onsite and on the adjacent tract to the southeast and in such a manner so as not to return to Laguna Madre. CCC Project No.: 05-0153-F1; Type of Application: U.S.A.C.E. permit application #19925(03) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Palace Exploration Company; Location: The project is located in Matagorda Bay, approximately 8.1 miles southwest of Matagorda, Texas, in Matagorda County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Palacios Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 787306; Northing: 3168072. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. Such activities include installation of a 150-foot-long by 50-foot-wide marine drilling barge, stabilized by six 3-pile clusters. No shell pad will be utilized. Should the well prove to be productive, the applicant proposes to replace the drilling platform with a 20-foot by 10-foot well protection platform. Depth along the project site is -8.86 feet below mean high water. CCC Project No.: 05-0156-F1; Type of Application: U.S.A.C.E. permit application #23609 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Davis Petroleum Corporation; Location: The project is located in Galveston Bay, Texas State Tract (ST) 99, Chambers County, Texas. The well can be located on the U.S.G.S. quadrangle map entitled: Smith Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 319720.79; Northing: 3277403.22. Project Description: The applicant proposes to erect and maintain structures and to perform work to drill and produce the ST-99 Well No. 2. This activity consists of the permanent placement of a 30-foot by 7-foot well platform and a 70-foot by 70-foot production platform with a 6-inch flowline jetted or trenched between the two. During drilling operations, the applicant will place 2,667 cubic yards of shell, gravel, or crushed rock for the marine barge pad. A

survey was conducted and no shell reefs or oysters were found within the proposed work area. CCC Project No.: 05-0157-F1; Type of Application: U.S.A.C.E. permit application #23682 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Davis Petroleum Corporation; Location: The project is located in Galveston Bay, Texas State Tract (ST) 113, Chambers County, Texas. The well can be located on the U.S.G.S. quadrangle map entitled: Smith Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 319910.2; Northing: 3274726.0. Project Description: The applicant proposes to erect and maintain structures and to perform work to drill and produce the ST-113 Well No. 1. This activity consists of the permanent placement of a 30-foot by 7-foot well platform and a 70-foot by 70-foot production platform, with a 6-inch flowline jetted or trenched between the two. During drilling operations, the applicant will place 2,667 cubic yards of shell, gravel, or crushed rock for the marine barge pad. A survey was conducted and no shell reefs or oysters were found within the proposed work area. CCC Project No.: 05-0158-F1; Type of Application: U.S.A.C.E. permit application #23683 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Davis Petroleum Corporation; Location: The proposed well is located in Texas State Tract (ST) 99, in Galveston Bay, Chambers County, Texas. The well can be located on the U.S.G.S. quadrangle map entitled: Smith Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 320603.90; Northing: 3277688.63. The proposed pipeline is located from the proposed well to an existing production platform located on the U.S.G.S. quadrangle map entitled: Smith Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 319721; Northing: 3277403. Project Description: The applicant proposes to erect and maintain structures and to perform work to drill and produce the ST-99 Well No. 3. This activity consists of the permanent placement of a 30-foot by 7-foot well platform and a 70-foot by 70-foot production platform. During drilling operations the applicant will place 2,667 cubic yards of shell, gravel, or crushed rock for the marine barge pad. The applicant also proposes to install an 8-inch pipeline from Well No. 3 to the existing production platform at ST-99 Well No. 1. The proposed pipeline will be 3,255 feet long and jetted or trenched to a depth of 3 feet below the bay bottom. A survey was conducted and no shell reefs or oysters were found within the proposed work area. CCC Project No.: 05-0159-F1; Type of Application: U.S.A.C.E. permit application #23689 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or

tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200501059

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: March 8, 2005

Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapter 2155, Section 2155.001, Chapter 403, Section 401.011 and Chapter 2156, Section 2156.121, Texas Government Code; the Comptroller of Public Accounts (Comptroller) announces its Request for Proposals (RFP #172d) from qualified, firms to provide Outbound Mailing Services to the Comptroller. The successful respondent, if any, will provide outbound mailing services to the Comptroller on an as needed basis as described in the RFP.

Contact: Parties interested in submitting a proposal should contact Thomas H. Hill, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., RM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on March 18, 2005, between 2:00 p.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the RFP available electronically on the Texas Marketplace after Friday, March 18, 2005, 2:00 p.m. (CZT).

Pre-proposal conference: A pre-proposal conference will be held on April 8, 2005 at 111 E. 17th St., RM 212c, Austin, Texas, 78774. Conference time is 10:00 a.m. CZT. Attendance at the pre-proposal conference is not a prerequisite to submitting a proposal but is strongly encouraged.

Questions and Mandatory Letters of Intent: All written inquiries, questions, and Mandatory Letters of Intent to propose must be received at 111 E. 17th Street, Rm G-24, Austin, Texas 78774 not later than 2:00 p.m. (CZT) on Monday, April 11, 2005. Prospective respondents are encouraged to fax mandatory Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The Letter of Intent must be addressed to Thomas H. Hill, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. Mandatory Letters of Intent and Questions received after this time and date will not be considered. Proposals will not be accepted from respondents that do not submit letters of intent by the above date and time. Respondents are encouraged to verify and are solely responsible for verifying timely receipt of letters of intent in that office (ROOM G-24). On or about Friday, April 15, 2005, the Comptroller expects to post responses to questions as a revision to the Texas Marketplace notice on the issuance of this RFP.

Closing Date: Proposals must be delivered to the Office of the Assistant General Counsel, Contracts, at the location specified above (ROOM G-24) no later than 2:00 p.m. (CZT), on Friday, April 29, 2005. Proposals received in ROOM G-24 after this time and date will not be considered regardless of the reason for the late delivery and receipt. Respondents are encouraged to verify and are solely responsible for verifying timely receipt of proposals in that office (ROOM G24).

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Comptroller shall make the final decision on any contract award or awards resulting from this RFP.

The Comptroller reserves the right, in its sole discretion, to accept or reject any or all proposals submitted. The Comptroller is not obligated to award or execute any contracts on the basis of this notice or the distribution of any RFP. The Comptroller shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - March 18, 2005, 2:00 p.m. CZT; Pre-Proposal Conference- April 8, 2005, 10:00 a.m. CZT; Mandatory Letter of Intent to propose and Questions Due - April 11, 2005, 2:00 p.m. CZT; Official Responses to Questions posted - April 15, 2005, or as soon thereafter as practical; Proposals Due - April 29, 2005, 2:00 p.m. CZT; Contract Execution - May 27, 2005, or as soon thereafter as practical; and Commencement of Project Activities - June 1, 2005 for any necessary transition in preparation for services to begin September 1, 2005.

TRD-200501081
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: March 9, 2005

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 03/14/05 - 03/20/05 is 18% for Consumer¹/Agricultural/Commercial²/credit thru \$250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 03/14/05 - 03/20/05 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-200501058
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 8, 2005

Texas Commission on Environmental Quality

Enforcement Orders

A default order was entered regarding DBW Enterprises, Ltd. dba Scotty Mint Grocery, Docket No. 2003-0259-PST-E on 02/15/2005 assessing \$6,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barbara Klein, Staff Attorney at 512/239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. I. Du Pont de Nemours and Company, Docket No. 2002-1118-IWD-E on 02/15/2005 assessing \$17,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lindsay Andrus, Staff Attorney at 512/239-4761, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Albert E. Ellis dba Houston Land Designers, Docket No. 2003-1553-LII-E on 02/15/2005 assessing \$250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deborah Bynum, Staff Attorney at 512/239-1976, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mohammad N. Qureshi dba Hah Gas Mart, Docket No. 2003-0855-PST-E on 02/15/2005 assessing \$3,870 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barbara Watson, Staff Attorney at 512/239-2044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Garland, Docket No. 2002-1353-AIR-E on 02/15/2005 assessing \$4,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Wendy Cooper, Staff Attorney at 817/588-5867, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Laredo, Docket No. 2003-1285-MWD-E on 02/15/2005 assessing \$6,550 in administrative penalties with \$1,310 deferred.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at 512/239-4482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Antonio Garcia dba Garcia Junk Yard, Docket No. 2003-1476-MSW-E on 02/15/2005 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lindsay Andrus, Staff Attorney at 512/239-4761, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Atofina Petrochemicals, Inc., Docket No. 2004-0065-AIR-E on 02/15/2005 assessing \$27,020 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at 512/239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dominion Exploration & Production, Inc., Docket No. 2003-1324-AIR-E on 02/15/2005 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at 512/239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Inayat Enterprises, Inc. dba Mini Max Food Mart, Docket No. 2003-1005-PST-E on 02/15/2005 assessing \$5,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Wendy Cooper, Staff Attorney at 817/588-5867, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sharon Washington dba S & J Tire Service, Docket No. 2003-1539-MSW-E on 02/15/2005 assessing \$5,500 in administrative penalties with \$1,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at 903/535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Babaji & Company, Inc. dba Phillips 66, Docket No. 2004-0174-PST-E on 02/15/2005 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at 361/825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nizamani, Inc. dba Delta Food Store, Docket No. 2004- 0208-PST-E on 02/15/2005 assessing \$3,850 in administrative penalties with \$770 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at 817/588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2004-0296-AIR-E on 02/15/2005 assessing \$11,325 in administrative penalties with \$2,265 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at 512/239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Car Spa, Inc. dba Car Spa Car Wash, Docket No. 2004- 0343-PST-E on 02/15/2005 assessing \$7,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at 817/588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Munisha, Inc. dba Grab all Drive In Grocery, Docket No. 2004-0406-PWS-E on 02/15/2005 assessing \$350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ashley Keever, Staff Attorney at 512/239-2987, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enbridge Pipelines Texas Gathering, Inc., Docket No. 2004-0413-AIR-E on 02/15/2005 assessing \$6,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Richard Croston, Enforcement Coordinator at 512/239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron U.S.A., Inc. dba Chevron Products Company, Docket No. 2004-0425-IWD-E on 02/15/2005 assessing \$6,880 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at 512/239-5025,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enbridge Pipelines (East Texas), LP, Docket No. 2004- 0439-AIR-E on 02/15/2005 assessing \$2,425 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at 512/239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2004-0458-AIR-E on 02/15/2005 assessing \$13,090 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Edward Moderow, Enforcement Coordinator at 512/239-2680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Water Association of North Lake, Inc., Docket No. 2004- 0464-PWS-E on 02/15/2005 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at 713/767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dalton Oil, Inc., Docket No. 2004-0493-PST-E on 02/15/2005 assessing \$1,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at 512/239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Signature Stores, Inc. dba One Stop Fina, Docket No. 2004-0514-PST-E on 02/15/2005 assessing \$3,510 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at 512/239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Caney Creek Haven Club Civic Committee, Inc. dba Caney Creek Haven Club Water System, Docket No. 2004-0516-PWS-E on 02/15/2005 assessing \$1,523 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at 713/422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Red Star Truck Terminal, Inc. dba Texaco Gas and Go 3, Docket No. 2004-0575-PST-E on 02/15/2005 assessing \$3,850 in administrative penalties with \$770 deferred.

Information concerning any aspect of this order may be obtained by contacting Susan Longenecker, Enforcement Coordinator at 512/239-0968, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ZSA Investment, Inc. dba J's Shoppers Mart, Docket No. 2004-0588-PST-E on 02/15/2005 assessing \$4,950 in administrative penalties with \$990 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at 512/239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Clean Harbors Deer Park, LP, Docket No. 2004-0621- IHW-E on 02/15/2005 assessing \$12,750 in administrative penalties with \$2,550 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at 512/239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pay and Save, Inc., Docket No. 2004-0693-PST-E on 02/15/2005 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at 512/239-4482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Masters Resources, LLC, Docket No. 2004-0701-AIR-E on 02/15/2005 assessing \$8,000 in administrative penalties with \$1,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Lori Thompson, Enforcement Coordinator at 903/535-5116, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Town of Prosper, Docket No. 2004-0749-MWD-E on 02/15/2005 assessing \$3,420 in administrative penalties with \$684 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at 512/239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Thomas Newman dba T J & N Water Utility dba Cedar Oaks Mobile Home Community and Homestead Oaks Mobile Home Community, Docket No. 2004- 0750-PWS-E on 02/15/2005 assessing \$2,416 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at 713/422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fleetpride, Inc., Docket No. 2004-0761-MLM-E on 02/15/2005 assessing \$1,150 in administrative penalties with \$230 deferred.

Information concerning any aspect of this order may be obtained by contacting Chad Blevins, Enforcement Coordinator at 512/239-6017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Holder Management and Construction, Inc., Docket No. 2004-0778-SLG-E on 02/15/2005 assessing \$3,500 in administrative penalties with \$700 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at 512/239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bissonnet Municipal Utility District, Docket No. 2004- 0804-MWD-E on 02/15/2005 assessing \$1,900 in administrative penalties with \$380 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at 512/239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cooper Cameron Corporation, Docket No. 2004-0920- MWD-E on 02/15/2005 assessing \$3,580 in administrative penalties with \$716 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Reed, Enforcement Coordinator at 432/620-6132, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fort Gates WSC, Docket No. 2004-0925-PWS-E on 02/15/2005 assessing \$2,650 in administrative penalties with \$530 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at 512/239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Three Rivers, Docket No. 2004-0933-PWS-E on 02/15/2005 assessing \$250 in administrative penalties with \$50 deferred.

Information concerning any aspect of this order may be obtained by contacting Edward Moderow, Enforcement Coordinator at 512/239-2680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding D & D Investments Partners, LP, Docket No. 2004-0936- SLG-E on 02/15/2005 assessing \$1,950 in administrative penalties with \$390 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at 713/767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Son & Chi Corporation dba Buckingham Chevron, Docket No. 2004-0943-PST-E on 02/15/2005 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at 512/239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Yoon K. Suh and Gregory T. Adams dba Griffis Corner, Docket No. 2004-1042-PST-E on 02/15/2005 assessing \$16,500 in administrative penalties with \$3,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at 512/239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Collinsworth & Watson, Inc., Docket No. 2004-1053- PST-E on 02/15/2005 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at 512/239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mass Marketing, Ltd. dba Super S Foods 327, Docket No. 2004-1107-PST-E on 02/15/2005 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at 512/239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200501077

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 9, 2005



Notice of District Petition

Notices mailed March 7, 2005

TCEQ Docket No. 2004-2030-DIS; The Texas Commission on Environmental Quality (TCEQ) will conduct a hearing on an application for dissolution (application) of Harris County Municipal Utility District No. 263 (District). The application was filed with the TCEQ and includes a petition by Bear Creek Trust (applicant), being an owner of property located within the District. The TCEQ will conduct this hearing under the authority of Chapters 49 and 54 of the Texas Water Code, Title 30, Chapter 293 of the Texas Administrative Code and the procedural rules of the TCEQ. The TCEQ will conduct the hearing at: 9:30 a.m., Wednesday, April 27, 2005 Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas. On June 27, 1984, the Texas Water Commission created the District. The District operates under Texas Water Code Chapters 49 and 54 as a municipal utility district. The petition filed with the application states that dissolution is desirable or necessary because the District is not required for the development of land within its boundaries. The petition filed with the application also states that the District: (1) has performed none of the functions for which it was created for five consecutive years preceding the date of the application, (2) is financially dormant, and (3) has no outstanding bonded indebtedness. An affidavit from the State Comptroller of Public Accounts has been included in the application, certifying that the District has no bonded indebtedness. If the request for dissolution is approved, the District's assets, if any, will escheat to the State of Texas and will be administered by the State Comptroller of Public Accounts and disposed of in the manner provided by Chapter 74 of the Texas Property Code.

TCEQ Docket No. 2004-1944-DIS; The Texas Commission on Environmental Quality (TCEQ) will conduct a hearing on an application for dissolution (application) of Harris County Municipal Utility District No. 268 (District). The application was filed with the TCEQ and includes a petition by NW Houston 529, LP, (applicant), being owners of property located within the District. The TCEQ will conduct this hearing under the authority of Chapters 49 and 54 of the Texas Water Code, Title 30, Chapter 293 of the Texas Administrative Code and the procedural rules of the TCEQ. The TCEQ will conduct the hearing at: 9:30 a.m., Wednesday, April 27, 2005, Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas. On June 14, 1985, the Texas Legislature created the District. The District operates under Texas Water Code Chapters 49 and 54 as a municipal utility district. The petition filed with the application states that dissolution is desirable or necessary because the District is not required for the development of land within its boundaries. The petition filed with the application also states that the District: (1) has performed none of the functions for which it was created for five consecutive years preceding the date of the application, (2) is financially dormant, and (3) has no outstanding bonded indebtedness. An affidavit from the State Comptroller of Public Accounts has been included in the application, certifying that the District has no bonded indebtedness. If the request for dissolution is approved, the District's

assets, if any, will escheat to the State of Texas and will be administered by the State Comptroller of Public Accounts and disposed of in the manner provided by Chapter 74 of the Texas Property Code.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. The TCEQ may approve the application unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the TCEQ Docket Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the request in a way uncommon to the general public. You may also submit your proposed adjustments to the application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687- 4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

Persons with disabilities who plan to attend this hearing and who need special accommodations at the hearing should call the TCEQ Office of Public Assistance at 1-800-687-4040 or 1-800- RELAY-TX(TDD), at least one week prior to the hearing.

TRD-200501079

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 9, 2005



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 18, 2005**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional

notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 18, 2005**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: ABC Group, Inc. dba Come N' Go; DOCKET NUMBER: 2004-0884-PST-E; TCEQ ID NUMBERS: 71185 and RN101552495; LOCATION: 1401 Cooks Lane, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(1)(C)(ii), by failing to maintain required underground storage tanks (USTs) records to such that they are readily accessible and available for inspection upon request by commission personnel; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c), by failing to monitor the USTs for releases at a frequency of at least once every month; and 30 TAC §334.48(c) and §334.50(d)(1)(B)(ii) and (iii)(I) and TWC, §26.3475(c), by failing to conduct effective manual or automatic inventory control procedures; PENALTY: \$12,210; STAFF ATTORNEY: Ann Skowronski, Litigation Division, MC 175, (512) 239-2497; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588- 5800.

(2) COMPANY: Dan Mauldin dba Travis Equipment Company; DOCKET NUMBER: 2003- 0241-AIR-E; TCEQ ID NUMBER: RN102777778; LOCATION: 3876 East Highway 287, Midlothian, Ellis County, Texas; TYPE OF FACILITY: landscaping and equipment business; RULES VIOLATED: 30 TAC §111.201 and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with outdoor burning rules that prohibit unauthorized outdoor burning; PENALTY: \$2,700; STAFF ATTORNEY: Barbara Klein, Litigation Division, MC 175, (512) 239- 1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Friend Enterprises Inc. dba Friendly Mart; DOCKET NUMBER: 2003-1045- PST-E; TCEQ ID NUMBERS: 0007146, CN601370315, and RN100825090; LOCATION: 7200 Manchaca, Austin, Travis County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and §334.48(c) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once per month and failing to conduct inventory control and reconciliation for a UST system at a retail facility; §334.50(b)(2)(A)(i)(III) and (ii) and TWC, §26.3475(a), by failing to test or monitor the piping in the UST system for releases; and TWC, §7.101 and Default Order 96-0945-PST-E, Ordering Provision Number 5, by failing to pay the administrative penalty; PENALTY: \$16,200; STAFF ATTORNEY: Deborah A. Bynum, Litigation Division, MC 175, (512) 239-1976; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(4) COMPANY: Larry Gossett dba Oaks Mobile Home Park; DOCKET NUMBER: 2004- 0239-PWS-E; TCEQ ID NUMBERS: 2200150 and RN102324118; LOCATION: 6713 Anglin Drive, Forest Hill, Tarrant County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(q), by failing to issue a "boil water notification" to customers of the facility within 24 hours of the occurrence of

a water outage at the facility; PENALTY: \$250; STAFF ATTORNEY: Barbara J. Watson, Litigation Division, MC 175, (512) 239-2044; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Maurice Lozano; DOCKET NUMBER: 2004-0088-OSS-E; TCEQ ID NUMBER: RN104101282; LOCATION: 11125 Dallas Road, Block 13, Lot 6, Carlsbad, Tom Green County, Texas; TYPE OF FACILITY: sewage disposal pit; RULES VIOLATED: 30 TAC §285.3(i), by operating a seepage pit treating or disposing of less than 5,000 gallons of sewage per day; PENALTY: \$788; STAFF ATTORNEY: Barbara Klein, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(6) COMPANY: Mohammed K. Aroud dba Jones Mart Shell; DOCKET NUMBER: 2004- 0089-PST-E; TCEQ ID NUMBERS: 33010 and RN102834223; LOCATION: 11702 Jones Road, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to monitor USTs in a manner that will detect a release at a frequency of at least once every month; 30 TAC §334.8(c)(4)(B) and §334.7(a)(1) and TWC, §26.346(a), by failing to ensure that the UST registration and self-certification form is fully and accurately completed and submitted to the agency in a timely manner; 30 TAC §37.815(a)(1) and (b)(1), by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current delivery certificate before delivery of a regulated substance into the USTs; 30 TAC §334.48(c), by failing to conduct inventory control at a retail facility; 30 TAC §334.22(a), by failing to pay annual UST registration and associated late fees; and 30 TAC §334.73 and §334.74, by failing to conduct a site check upon the request of the TCEQ when environmental contamination is the basis for suspecting a release; PENALTY: \$132,500; STAFF ATTORNEY: Deborah A. Bynum, Litigation Division, MC 175, (512) 239-1976; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023- 1486, (713) 767-3500.

(7) COMPANY: Pete Maldonado; DOCKET NUMBER: 2003-0026-MSW-E; TCEQ ID NUMBER: RN102959442; LOCATION: Pandale Road 15 miles south of Ozona, Crockett County, Texas; TYPE OF FACILITY: scrap tire site; RULES VIOLATED: 30 TAC §328.57(c)(3), by failing to transport scrap tires to an authorized site; 30 TAC §328.57(c)(1), by failing to obtain a scrap tire transporter registration prior to collecting and transporting scrap tires; and 30 TAC §328.60(a), by failing to obtain a scrap tire storage site registration prior to storing more than 500 scrap tires on the ground; PENALTY: \$5,600; STAFF ATTORNEY: Deborah A. Bynum, Litigation Division, MC 175, (512) 239-1976; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(8) COMPANY: Syeda Enterprises, Inc. dba Buy N Buy Drive In; DOCKET NUMBER: 2004-0611-PST-E; TCEQ ID NUMBERS: 34775 and RN101782043; LOCATION: 1310 North Pine Street, Kountze, Hardin County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain Stage II records on-site; 30 TAC §115.242(3)(G) and (5) and THSC, §382.085(b), by failing to operate the Stage II system in proper operating condition and free of defects that would impair the effectiveness of

the system; 30 TAC §334.10(b), by failing to have records of the line leak detector test, release detection, and gasoline deliveries available during the inspection; 30 TAC §334.10(b) and TWC, §26.3475(c)(2), by failing to equip the tank with overfill prevention equipment; 30 TAC §334.48(c), by failing to conduct inventory control as required for retail fuel dispensing facilities; 30 TAC §334.50(b)(2) and (1)(A) and TWC, §26.3475(a), by failing to provide proper release detection for the product piping associated with the UST system and by failing to ensure that all tanks were monitored for releases at a frequency of at least once every month; 30 TAC §334.8(c)(5)(C), by failing to permanently tag, label, or mark the UST system with an identification number listed on the UST registration and self-certification form; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to successfully conduct triennial vapor recovery system testing; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay UST fees; PENALTY: \$34,680; STAFF ATTORNEY: Barbara Klein, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-200501048

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 8, 2005



Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 18, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 18, 2005**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: Canyon Lake Water Supply Corporation; DOCKET NUMBER: 2003-0532- MLM-E; TCEQ ID NUMBERS: 0460172 and RN101247039; LOCATION: intersection of Meckel Road and Triple Peak Road, Canyon Lake, Comal County, Texas; TYPE OF FACILITY:

public water supply; RULES VIOLATED: 30 TAC §290.46(m)(4), by failing to maintain all water storage facilities and related appurtenances in a watertight condition; 30 TAC §290.42(e)(3)(D), by failing to provide operable scales for the chlorine cylinders so the amount of disinfectant remaining for use can easily be determined at all times; 30 TAC §290.46(v), by failing to install all water system electrical wiring in a securely mounted conduit in compliance with a local or national electric code; 30 TAC §290.41(e)(3)(C), by failing to enclose the plant and all appurtenances thereof with an intruder-resistant, locked fence or locked building during periods of darkness or when the plant is not attended; 30 TAC §290.41(c)(3)(O), by failing to maintain three strands of barbed wire at the top of the fence surrounding the well sites; 30 TAC §290.41(c)(3)(N), by failing to maintain an operational flow meter on each well pump discharge line; 30 TAC §290.41(c)(1)(F), by failing to secure a sanitary control easement from property owners covering the land within 150 feet of the well location or to secure a commission-approved exception to the easement requirement; 30 TAC §290.42(d)(6)(E)(ii), by failing to provide adequate containment facilities for all liquid chemical storage tanks; 30 TAC §290.113(b)(1) and (f)(4), by failing to maintain compliance with the maximum containment level of 0.080 milligrams per liter for trihalomethanes (TTHM) in the drinking water supplied to the customers; 30 TAC §290.113(g)(1) and §290.122(b), by failing to provide public notice of the first quarter TTHM exceedances to all customers of the water supply system within 30 days after the exceedance was identified; 30 TAC §305.42(a) and TWC, §26.121(a)(1), by failing to obtain a permit for the impoundment of wastewater into a holding pond; and TWC, §26.121(a)(1), by allowing an unauthorized discharge to an adjacent property from an unpermitted holding pond; PENALTY: \$7,395.50; STAFF ATTORNEY: Rebecca Nash Petty, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Don Vogt dba West Side Salvage; DOCKET NUMBER: 2004-1404-MSW-E; TCEQ ID NUMBER: RN104192182; LOCATION: one mile north of the intersection of Highway 359 and J. C. Perez Road, Oilton, Webb County, Texas; TYPE OF FACILITY: unauthorized waste disposal site; RULES VIOLATED: 30 TAC §330.5(a) and §330.32(b)(1), by failing to transport and dispose of waste at an authorized disposal facility; PENALTY: \$2,520, STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3638, (956) 791- 6611.

(3) COMPANY: J.D. Grewal, Inc. dba Spin N Market 7; DOCKET NUMBER: 2004-1227- PST-E; TCEQ ID NUMBERS: 54555 and RN102937836; LOCATION: 308 North Winfree, Dayton, Liberty County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks; PENALTY: \$2,850; STAFF ATTORNEY: Mary Clair Lyons, Litigation Division, MC 175, (512) 239-6996; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Meng Taing dba Drive In Grocery; DOCKET NUMBER: 2004-0574-PST-E; TCEQ ID NUMBER: 6273; LOCATION: 1217 Terminal Road, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment by performing the annual testing within 12 months of the last successful annual test performed; PENALTY: \$1,070; STAFF

ATTORNEY: Barbara Klein, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200501047

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 8, 2005



Notice of Water Quality Applications

The following notices were issued during the period of March 1, 2005 through March 7, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

AUC GROUP, L.P. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014566001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 14,300 gallons per day. The facility is located 160 feet south of the intersection of Little River and State Highway 36 in Milam County, Texas.

CAPITOL AREA COUNCIL, INC., BOY SCOUTS OF AMERICA has applied for a renewal of Permit No. 14187-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 23,795 gallons per day via subsurface drain-fields with a minimum area of 85,334 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located on a 541-acre tract located along Farm- to-Market Road 1441 nearly 3.5 miles east of its intersection with State Highway 95, between U.S. Highway 290 and State Highway 71, approximately 5 miles north of Bastrop along State Highway 95 in Bastrop County, Texas.

FRONTIER FERTILIZER & CHEMICAL CO., L.L.C. which operates a fertilizer mix plant, has applied for a renewal of Permit No. WQ0002405000, which authorizes the disposal of wash down, ground-water, and storm water via evaporation. This permit will not authorize a discharge of pollutants into water in the State. The facility and evaporation pond are located at the southeast corner of the intersection of Texas Highway 114 and Farm-to-Market Road 2378 which is two miles west of Reese Center (formerly Reese Air Force Base) and adjacent to the south edge of the West Texas and Lubbock Railroad, Lubbock County, Texas.

GRAND MISSION MUNICIPAL UTILITY DISTRICT NO. 1 has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit to delete Interim II phase of 0.40 million gallons per day (MGD) and Interim III phase of 0.50 MGD and authorize an Interim II phase of 0.60 MGD. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,000,000 gallons per day. The facility is located approximately 0.9 mile south and 0.5 mile west of the intersection of Farm-to-Market Road 1093 and Harlem Road in Fort Bend County, Texas.

WEST HARDIN COUNTY CONSOLIDATED INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. 11274-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per

day. The facility is located immediately south of the intersection of State Highway 105 and Farm-to-Market Road 770 and approximately 1,000 feet east of Pine Island Bayou in Hardin County, Texas.

RODDIE WOOL SCOURING COMPANY, INC which operates a raw wool washing facility, has applied for a renewal of Permit No. WQ0001297000, which authorizes the disposal of process wastewater from the scouring of raw wool and boiler blowdown at a daily average flow not to exceed 143,000 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into water in the State. The facility and evaporation ponds are located at the intersection of East 2nd Street and A.L. Reed Street in the City of Brady, McCulloch County, Texas.

CITY OF SINTON has applied for a renewal of TPDES Permit No. 13641-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located in the Rob and Bessie Welder Park on U. S. Highway 181, approximately 2.4 miles north of the intersection of U. S. Highway 181 and Farm-to-Market Road 881 in San Patricio County, Texas.

THE U. S. DEPARTMENT OF JUSTICE has applied for a renewal of Permit No. 13461-001 to authorize the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 30,000 gallons per day via irrigation of 82 acres of non-public access. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located on Federal Correctional Institute Three Rivers land approximately 2,000 feet south of State Highway 72 and 8 miles west of the Town of Three Rivers in Live Oak County, Texas.

CITY OF WAELDER has applied for a major amendment to TPDES Permit No. 14252-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 120,000 gallons per day to a daily average flow not to exceed 365,000 gallons per day. The facility is located on the north bank of Baldrige Creek in the southeast portion of the City of Waelder approximately 0.71 mile southeast of the intersection of U. S. Highway 90 and State Highway 97 in Gonzales County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 10 DAYS OF THE ISSUED DATE OF THIS NOTICE

The Texas Commission on Environmental Quality (TCEQ) has initiated a minor modification of the Texas Pollutant Discharge Elimination System (TPDES) permit issued to CITY OF EDCOUCH to correct duplicate pages, numbered 26-28, and to correct a discrepancy in Other Requirement No. 1. The operator must have a Class C certificate of competency. The existing permit incorrectly required a Class D certificate of competency. Other requirement No. 1 has been amended to reflect the correct requirement. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 310,000 gallons per day. The facility is located approximately 0.5 mile northeast of the intersection of State Route 107 and Farm-to-Market Road 1015 in Hidalgo County, Texas.

TRD-200501078

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 9, 2005



Notice of Water Rights Application

Notices mailed March 7 and March 8, 2005.

APPLICATION NO. 5863; The Great American Foods Corporation, 7566 U.S. Highway 259 N, Ore City, Texas 75683, applicant, seeks a Water Use Permit pursuant to Texas Water Code 11.143 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. The Great American Foods Corporation seeks authorization to maintain an existing reservoir on an unnamed tributary of Paw Paw Bayou, Cypress Basin, in Harrison County, for recreational purposes. The reservoir has a capacity of 91.8 acre-feet of water with a surface area of 9.18 acres, and is located in the W.H. Adams Original Survey, Abstract A-54, approximately 17 miles east from Marshall and 1 mile west from Waskom, Texas. The midpoint on the centerline of the dam is 100 feet north from the southwest corner of the Adams Survey, also being at Latitude 32.4819 N and Longitude 94.0867 W. No diversions are requested. Ownership of the land inundated by the reservoir is evidenced by an Assumption Warranty Deed dated September 6, 2000, filed in Volume 2142, Pages 75-80 in the County Clerk's Office of Harrison County, Texas. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application and fees were received on September 29, 2004, and additional requested information was received on December 22, 2004. The application was declared administratively complete and filed with the Office of the Chief Clerk on January 7, 2005. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 5862; Sanger Development, LP, 4401 N. I-35, Suite 107, Denton, Texas 76207, applicant, seeks a Water Use Permit pursuant to Texas Water Code 11.143, and Texas Natural Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Sanger Development, LP, seeks to modify and maintain an existing reservoir on an unnamed tributary of Ranger Branch, tributary of Clear Creek, tributary of the Elm Fork Trinity River, tributary of the Trinity River, Trinity River Basin, in Denton County, for recreational purposes. The reservoir will have a capacity of 40 acre-feet of water, surface area of 3.46 acres, and will be located in the Rueben Bebee Original Survey, Abstract 29, approximately 1 mile east from Sanger and 10 miles north from Denton, Texas. The midpoint on the centerline of the dam will be N89.23 W, 9,206 feet from the southeast corner of the Rueben Bebee Original Survey, also being Latitude 33.359 N and Longitude 97.154 W. Applicant has indicated that the reservoir will be maintained using municipal water purchased from the City of Sanger. During dry periods, the reservoir will be maintained at 2 feet below spillway level. No diversions are requested. The commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application and partial fees were received on September 3, 2004, and requested information and fees were received on October 8 and December 28, 2004. The application was declared to be administratively complete and filed with the Office of the Chief Clerk on January 13, 2005. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name

and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200501080

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 9, 2005

Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 25, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 25, 2005**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: Angleton Independent School District; DOCKET NUMBER: 2004-1618-PST- E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 18696, Regulated Entity Reference Number (RN) 101805513; LOCATION: Angleton,

Brazoria County, Texas; TYPE OF FACILITY: bus garage; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$2,460; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: AQA Retail, Inc. dba Stop-N-Drive 1; DOCKET NUMBER: 2004-1601-PST-E; IDENTIFIER: PST Facility Identification Number 27763, RN101738433; LOCATION: Alvin, Brazoria County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$1,640; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Sandra Phelps dba Avery 7-11; DOCKET NUMBER: 2004-1419-PST-E; IDENTIFIER: PST Facility Identification Number 5133, RN102956828; LOCATION: Avery, Red River County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$2,400; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(4) COMPANY: Bell County Water Control and Improvement District Number 1; DOCKET NUMBER: 2004-0793-MWD-E; IDENTIFIER: RN103155560; LOCATION: Killeen, Bell County, Texas; TYPE OF FACILITY: beneficial land use; RULE VIOLATED: 30 TAC §312.4(e) and the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge of municipal sludge; and 30 TAC §312.9(d) and the Code, §5.702(a), by failing to pay registration fees for beneficial land use registration; PENALTY: \$800; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-5839; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: Ali Mohammad Munaf dba Brownies Mini Mart; DOCKET NUMBER: 2004-1892-PST-E; IDENTIFIER: PST Facility Identification Number 47423, RN102371580; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$2,400; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Choice Petroleum, Inc. dba DJ's Country Store #2; DOCKET NUMBER: 2004-1058-PST-E; IDENTIFIER: PST Facility Identification Number 66384, RN102049053; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$2,180; ENFORCEMENT COORDINATOR: Ronnie Kramer, (806) 353-9251; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: Mehindi Fatehal Ajani dba Circle A Food Store; DOCKET NUMBER: 2004-1388-PST-E; IDENTIFIER: PST Facility Identification Number 39369, RN102238409; LOCATION: Crowley, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay underground storage tank (UST) registration annual fees; PENALTY: \$3,210; ENFORCEMENT COORDINATOR: David VanSoest, (512)

239-0468; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Dahisar Business, Inc. dba Honey Stop 2; DOCKET NUMBER: 2004-1641-PST-E; IDENTIFIER: PST Facility Identification Number 24455, RN102253242; LOCATION: Orange, Orange County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), (2)(A)(i)(III), and (d)(1)(B)(ii) and the Code, §26.3475(a) and (c), by failing to provide proper release detection, by failing to test a line leak detector, by failing to permit a tightness test, and by failing to reconcile inventory control records; and 30 TAC §115.246(1) and THSC, §382.085(b), by failing to maintain a copy of the applicable California Air Resource Board Executive Order; PENALTY: \$3,360; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: Degussa Engineered Carbons, L.P.; DOCKET NUMBER: 2004-1724-AIR-E; IDENTIFIER: Air Account Number HW0008S, RN100209659; LOCATION: Borger, Hutchinson County, Texas; TYPE OF FACILITY: carbon black production plant; RULE VIOLATED: 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to submit the initial emissions event report; and 30 TAC §111.111(a)(1)(B) and §116.115(c), Air Permit Number 8780, and THSC, §382.085(b), by failing to maintain an emission rate below the maximum allowable emission rate of 0.38 pounds per hour of particulate matter and failing to maintain the opacity of emissions below the limit of 20%; PENALTY: \$5,160; ENFORCEMENT COORDINATOR: Ronnie Kramer, (806) 353-9251; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(10) COMPANY: Peter S. Kim dba EZ Stop N Go; DOCKET NUMBER: 2004-1834-PST-E; IDENTIFIER: PST Facility Identification Number 35153, RN102251006; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$1,050; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: FM 78 Enterprises Inc. dba Capital Food Mart; DOCKET NUMBER: 2004-1675-PST-E; IDENTIFIER: PST Facility Identification Number 14312, RN101443646; LOCATION: Kirby, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(2)(C) and (4) and the Code, §26.3475(d), by failing to inspect and test the cathodic protection system; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures; 30 TAC §334.7(d)(3) and the Code, §26.346, by failing to provide written notice to the agency of any change or additional information concerning the UST system; and 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied or affixed to the fill tube; PENALTY: \$6,840; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(12) COMPANY: Byron Harris dba Fast Stop Grocery; DOCKET NUMBER: 2004-1665-PST-E; IDENTIFIER: PST Facility Identification Number 21075, RN102902228; LOCATION: Big Spring, Howard County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance;

PENALTY: \$1,600; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(13) COMPANY: HSY Inc. dba Beltline Mobil; DOCKET NUMBER: 2004-1922-PST-E; IDENTIFIER: PST Facility Identification Number 17470, RN100536671; LOCATION: Carrollton, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$2,400; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Hong & Taft, Inc. dba H & T Texaco; DOCKET NUMBER: 2004-1826-PST-E; IDENTIFIER: PST Facility Identification Number 69145, RN101827616; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$2,100; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Jeffy's Inc. dba Jeffys Exxon Mobil 2; DOCKET NUMBER: 2004-1676-PST-E; IDENTIFIER: PST Facility Identification Number 2683, RN100564327; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$1,600; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: LC Franklin, Inc. dba Hitching Post; DOCKET NUMBER: 2004-1632-PST-E; IDENTIFIER: PST Facility Identification Number 18564, RN102358629; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A), (b)(2)(A)(ii)(I) and (i)(III) and the Code, §26.3475(a) and (c)(1), by failing to provide the UST system with a method, or combination of methods, and release detection capable of detecting a release, by failing to annually test the piping, and by failing to perform an annual performance test on the line leak detectors; 30 TAC §334.10(b)(1)(B), by failing to keep on file and make available for review, inventory control records that show monthly reconciliation is being performed; and 30 TAC §334.7(d)(3), by failing to amend the UST registration and self-certification form; PENALTY: \$4,032; ENFORCEMENT COORDINATOR: Sandy VanCleave, (512) 239-0667; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Lake Livingston Water Supply and Sewer Service Corporation; DOCKET NUMBER: 2003-0639-PWS-E; IDENTIFIER: Certificate of Convenience and Necessity Number 10147, RN101652097; LOCATION: near Livingston, Onalaska, Camilla, Coldspring, Onalaska, Point Blank, Shepherd; Polk, Hardin, and San Jacinto Counties, Texas; TYPE OF FACILITY: public water supply systems; RULE VIOLATED: 30 TAC §290.45(b)(1)(A)(i) and (ii), (C)(i) - (iv), (D)(i) and (iii), and (f), and THSC, §341.0315(c), by failing to provide a well capacity of 0.6 and 1.5 gallons per minute (gpm) per connection, by failing to provide a total storage capacity of 200 gallons per connection, by failing to provide a pressure tank capacity of 50 gallons per connection, by failing to provide two or more wells having a total capacity of 0.6 gpm per connection, by failing to provide a total rated service pump capacity of two gpm per connection, by failing to provide a well capacity of 1.5 gpm per connection, by failing to provide a pressure tank capacity of 50 gallons per connection,

by failing to provide a well capacity of 0.6 gpm per connection, by failing to provide a service pump capacity of two gpm per connection, and by failing to provide a proper purchase water contract; 30 TAC §290.43(c)(1) - (7), (d)(3), and Order, Docket Number 31328-S, by failing to ensure that the ground storage tank vent is designed to prevent possible entry of dust, birds, insects, or any contaminants, by failing to provide each of the ground storage tanks with a properly designed roof access opening, by failing to equip the ground storage tank with a proper hinged flap valve, by failing to equip the ground storage tank with a water level indicator, by failing to properly locate the inlet and outlet connections, by failing to maintain the drain of the ground storage tank, and by failing to equip the pressure tank with a site glass; 30 TAC §290.46(b), (e)(1)(A), (f)(2) and (3)(A)(ii), (m)(1)(B), (t), and (u) (now 30 TAC §290.46(e)(4)(B)), and Order, Docket Number 31328-S, by failing to take the proper number of raw water samples, by failing to provide a Class C certified operator, by failing to maintain records of annual pressure tank inspections, by failing to properly maintain a record of operations, by failing to initiate a maintenance program, by failing to properly complete the tank inspections, by failing to provide a legible ownership sign, and by failing to plug an abandoned well; 30 TAC §291.93(3), by failing to submit a planning report; 30 TAC §290.109(c)(1)(A), by failing to collect routine bacteriological samples; 30 TAC §290.108(b)(1), by failing to meet the maximum contaminant level for gross alpha particle activity; 30 TAC §290.110(c)(5)(A) and (B), by failing to adhere to the facility's site sampling plan and by failing to consistently conduct daily chlorine residual tests; 30 TAC §290.41(c)(3)(B), (J), and (O), by failing to provide an 18-inch well casing, by failing to provide a proper concrete sealing block, by failing to repair the cracked concrete sealing block, and by failing to provide intruder-resistant fences; and 30 TAC §291.93(3), by failing to submit a planning report that clearly explains how the retail public utility will provide the expected service demands; PENALTY: \$50,764; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: Maxwell Lumber Company; DOCKET NUMBER: 2004-2062-AIR-E; IDENTIFIER: Air Account Number CJ00181, RN103057493; LOCATION: Bullard, Cherokee County, Texas; TYPE OF FACILITY: lumber mill; RULE VIOLATED: 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the general prohibition of outdoor burning; PENALTY: \$1,632; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(19) COMPANY: Metro Business, Inc. dba Metro Mart 9; DOCKET NUMBER: 2005-0140-PST-E; IDENTIFIER: PST Facility Identification Number 43676, RN101650984; LOCATION: Georgetown, Williamson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$2,100; ENFORCEMENT COORDINATOR: Jill McNew, (512) 239-0560; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(20) COMPANY: Millersview-Doole Water Supply Corporation; DOCKET NUMBER: 2005-0057-PWS-E; IDENTIFIER: Public Water Supply Number 0480015, RN101457786; LOCATION: near Millersview; Concho, McCulloch, Runnels, and Tom Green Counties, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(3)(K), by failing to provide a screen for the vent; 30 TAC §290.43(c)(6) and (e), by failing to maintain all water storage facilities tight against leakage, by failing to maintain the gates and doors locked whenever the facility is unattended, and by failing to maintain an intruder-resistant fence; PENALTY: \$901; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789;

REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674; 622 South Oaks, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(21) COMPANY: Mini-Mix of El Paso, Inc.; DOCKET NUMBER: 2004-1876-AIR-E; IDENTIFIER: Air Account Number EE2084U, RN102563947; LOCATION: Canutillo, El Paso County, Texas; TYPE OF FACILITY: concrete batch plant; RULE VIOLATED: 30 TAC §116.615(2), Air Permit Number 70885, and THSC, §382.085(b), by failing to construct and operate the plant according to the conditions of Air Permit Number 70885; PENALTY: \$800; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(22) COMPANY: Jivanji Burhani dba Quick & Easy 10; DOCKET NUMBER: 2004-1338-PST-E; IDENTIFIER: PST Facility Identification Number 71700, RN102052404; LOCATION: Splendora, Montgomery County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$820; ENFORCEMENT COORDINATOR: Leila Pezeshki, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: City of Rusk; DOCKET NUMBER: 2004-1084-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10447-001, RN103000766; LOCATION: Rusk, Cherokee County, Texas; TYPE OF FACILITY: municipal wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10447-001, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for total suspended solids; PENALTY: \$3,700; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(24) COMPANY: Schmidt & Sons, Inc.; DOCKET NUMBER: 2004-2129-PST-E; IDENTIFIER: PST Facility Identification Number 62915, RN102015567; LOCATION: Gonzales and La Grange; Gonzales and Fayette Counties, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: \$400; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100; 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(25) COMPANY: Dong Shin; DOCKET NUMBER: 2004-1545-PST-E; IDENTIFIER: PST Facility Identification Number 49866, RN102271681; LOCATION: South Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$2,910; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Texas Energy Services, L.P.; DOCKET NUMBER: 2004-1844-MLM-E; IDENTIFIER: RN104159751; LOCATION: Alice, Jim Wells County, Texas; TYPE OF FACILITY: service company providing oil and gas field supplies, equipment, and drilling fluids; RULE VIOLATED: 30 TAC §281.25(a)(4), 40 Code of Federal Regulations §122.21(a)(1), and the Code, §26.121(a), by failing to obtain authorization to discharge storm water related to industrial activities and by failing to prevent the discharge of sewage, municipal,

recreational, agricultural, or industrial waste; PENALTY: \$3,150; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(27) COMPANY: UMIA Corporation dba Westside Grocery; DOCKET NUMBER: 2004-1680-PST-E; IDENTIFIER: PST Facility Identification Number 36016, RN103024840; LOCATION: Bridgeport, Wise County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c), by failing to conduct inventory control; and 30 TAC §334.51(b)(2)(C) and the Code, §26.3475(c)(2), by failing to equip the USTs with an overfill device; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: David Wanjura dba Wanjura Feed Lot; DOCKET NUMBER: 2004-1437-AIR-E; IDENTIFIER: RN103018685; LOCATION: Weimar, Colorado County, Texas; TYPE OF FACILITY: feed lot; RULE VIOLATED: 30 TAC §101.4 and THSC, §382.085(b), by failing to comply with the nuisance rules; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: Weir Bros., Inc.; DOCKET NUMBER: 2004-1681-MLM-E; IDENTIFIER: Air Account Number DF0516J, Municipal Solid Waste (MSW) Number 455040152, RN100755727; LOCATION: Aubrey, Denton County, Texas; TYPE OF FACILITY: unauthorized disposal site; RULE VIOLATED: 30 TAC §330.5(c), by failing to prevent the unauthorized disposal of MSW; and 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the general prohibition of outdoor burning; PENALTY: \$3,300; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(30) COMPANY: John Wiesner, Inc.; DOCKET NUMBER: 2005-0030-PST-E; IDENTIFIER: PST Facility Identification Number 10356, RN102009750; LOCATION: Conroe, Montgomery County, Texas; TYPE OF FACILITY: motor vehicle dealership; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$950; ENFORCEMENT COORDINATOR: Alita Champagne, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200501057

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 8, 2005

Department of State Health Services

Designation of North Dallas Shared Ministries Free Medical Clinic for the Working Poor as a Site Serving Medically Underserved Populations

The Department of State Health Services (department) is required under the Occupations Code, §157.052, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as a site serving medically underserved populations: North Dallas Shared Ministries Free Medical Clinic For the Working Poor, 2875 Merrill Road, Dallas, Texas 75229-4702. The designation is based on eligibility as a site serving a disproportionate number of clients eligible for federal, state or locally funded health care programs.

Oral and written comments on this designation may be directed to Brian King, Program Specialist, Health Professions Resource Center, Center for Health Statistics, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756; telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-200501056
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: March 8, 2005

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Texas Department of Housing and Community Affairs

Announcement of the Public Hearing Schedule for Comment on the 2005 Housing Tax Credit Applications

The Texas Department of Housing and Community Affairs' (the "Department") programs were created to provide affordable housing opportunities for Texans. The Housing Tax Credit (HTC) Program assists in building affordable housing through the issuance of federal tax credits used to fund new construction and rehabilitation of multifamily residential Developments. The tax credits allow the Developments to be leased to income qualified families at or below market rents.

The following 13 public hearings are provided to gather public comment on the 2005 9% HTC Applications. The schedule of these meetings is provided below:

Waco, Region 8

Monday, April 11

10:00 a.m.

Heart of Texas Council of Governments

300 Franklin

Waco, TX 76701

(254) 756-7822

Austin, Region 7

Monday, April 11

2:00 p.m.

TDHCA Board Room

507 Sabine, 4th Floor

Austin, Texas 78701

(512) 475-3800

San Antonio, Region 9

Monday, April 11

7:00 p.m.

City Council Chambers

114 W. Commerce

San Antonio, TX 78205

(210) 207-7197

Lufkin, Region 5

Tuesday, April 12

1:00 p.m.

City Council Chambers

300 East Shepherd (Entrance on 3rd Street)

Lufkin, TX 75904

(936) 633-0244

Longview, Region 4

Tuesday, April 12

7:00 pm

Longview Public Library

222 West Cotton Street

Longview, TX 75601

(903) 237-1350

Lubbock, Region 1

Wednesday, April 13

7:00 p.m.

Mahon Public Library

1306 9th Street

Lubbock, TX 79401

(806) 775-2824

Ft. Worth, Region 3

Wednesday, April 13

7:00 p.m.

Fort Worth Municipal Building

2nd Floor City Council Chambers

1000 Throckmorton

Ft. Worth, TX 76102

(214) 670-7846

Wichita Falls, Region 2

Thursday, April 14

10:00 a.m.

Nortex Regional Planning Commission

4309 Jacksboro Hwy. Ste. 200

Wichita Falls, TX 76302

(940) 322-5281

Harlingen, Region 11

Thursday, April 14

12:00 p.m.

Harlingen Public Library

410 76th Drive

Harlingen, TX 78556
(956) 427-8841

Corpus Christi, Region 10

Thursday, April 14

7:00 p.m.

Grant Middle School (Cafeteria)

4350 Aaron

Corpus Christi, TX 78413

(361) 886-9008

San Angelo, Region 12

Monday, April 18

12:00 p.m.

City Council Chambers

72 West College Avenue

San Angelo, TX 76902

(325) 657-4241

Houston, Region 6

Monday, April 18

6:00 p.m.

City Hall Annex Chambers

900 Bagby

Public Level

Houston, TX 77002

(713) 247-2939

El Paso, Region 13

Wednesday, April 20

6:00 p.m.

El Paso County Courthouse

500 E. San Antonio

El Paso, TX 79901

(915) 546-2009

A detailed log of all 2005 Applications are posted to the Department's website at the following link: <http://www.tdhca.state.tx.us>

Written comments are also encouraged. Such comments should be addressed to:

Multi-Family Finance Division

Texas Department of Housing and Community Affairs

Post Office Box 13941

Austin, Texas 78711-3941

For additional information you may contact the 2005 Application liaison, Jennifer Joyce at 512.475.3995 or visit the program's web site at www.tdhca.state.tx.us.

Individuals who require auxiliary aids or services for these meetings should contact Gina Esteves, ADA Responsible Employee, at

512.475.3943 or Relay Texas at 1.800.735.2989 at least two days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for the hearing should contact Jorge Reyes at (512) 475-4577 at least three days before the hearing so that appropriate arrangements can be made. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-200501076

Edwina P. Carrington

Executive Director

Texas Department of Housing and Community Affairs

Filed: March 9, 2005

Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by SANTA FE AUTO INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Santa Fe, New Mexico.

Application to change the name of CDC IXIS FINANCIAL GUARANTY NORTH AMERICA, INC. to CIFG ASSURANCE NORTH AMERICA, INC., a foreign fire and/or casualty company. The home office is in New York, New York.

Application for incorporation to the State of Texas by U.S. AEROSPACE INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Addison, Texas.

Application for incorporation to the State of Texas by SOUTHERN PROPERTY AND CASUALTY INSURANCE COMPANY, LLC, a domestic fire and/or casualty company. The home office is in Houston, Texas.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas, 78701, within 20 days after this notice is published in the *Texas Register*.

TRD-200501074

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: March 9, 2005

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of CAP ROCK CLAIMS MANAGEMENT, LLC, a domestic third party administrator. The home office is DALLAS, TEXAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200501075

Gene C. Jarmon
 Chief Clerk and General Counsel
 Texas Department of Insurance
 Filed: March 9, 2005

Texas Lottery Commission

Instant Game Number 548 "Happy Anniversary"

1.0 Name and Style of Game.

A. The name of Instant Game No. 548 is "HAPPY ANNIVERSARY".
 The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 548 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 548.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500 or \$2,005.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 548 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY\$
\$50.00	FIFTY\$
\$100	ONE HUND
\$500	FIV HUND
\$2,005	2 THOU 5

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 548 - 1.2E

CODE	PRIZE
ONE	\$1.00
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100, or \$500.

I. High-Tier Prize- A prize of \$2,005.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (548), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 548-0000001-001.

L. Pack - A pack of "HAPPY ANNIVERSARY" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 246 to 250 will be on the last page. A ticket will be folded over on both the front and back of the book so both ticket art and ticket backs are displayed in the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "HAPPY ANNIVERSARY" Instant Game No. 548 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "HAPPY ANNIVERSARY" Instant Game is determined once the latex on the ticket is scratched off to expose eleven (11) Play Symbols. If a player matches any of the YOUR NUMBERS to the WINNING NUMBER, the player will win the prize shown for that number. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly eleven (11) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly eleven (11) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the eleven (11) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the eleven (11) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical "spot for spot" play data.

B. No duplicate non-winning Your Numbers play symbols on a ticket.

C. No duplicate non-winning prize symbols on a ticket.

D. Non-winning prize symbols will never be the same as the winning prize symbol(s).

E. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and \$5).

2.3 Procedure for Claiming Prizes.

A. To claim a "HAPPY ANNIVERSARY" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form

and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "HAPPY ANNIVERSARY" Instant Game prize of \$2,005, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HAPPY ANNIVERSARY" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "HAPPY ANNIVERSARY" Instant Game, the Texas Lottery shall deliver to an

adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "HAPPY ANNIVERSARY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,000,000 tickets in the Instant Game No. 548. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 548 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1.00	1,392,000	8.62
\$2.00	720,000	16.67
\$4.00	144,000	83.33
\$5.00	96,000	125.00
\$10.00	96,000	125.00
\$20.00	60,000	200.00
\$50.00	8,500	1,411.76
\$100	3,000	4,000.00
\$500	650	18,461.54
\$2,005	50	240,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.76. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 548 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 548, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501073

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 9, 2005



Instant Game Number 549 "\$1,000,000 Club"

1.0 Name and Style of Game.

A. The name of Instant Game No. 549 is "\$1,000,000 CLUB". The play style "is key symbol match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 549 shall be \$25.00 per ticket.

1.2 Definitions in Instant Game No. 549.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: HEART

SYMBOL, DIAMOND SYMBOL, SPADE SYMBOL, CLUB SYMBOL, DOLLAR SIGN SYMBOL, STAR SYMBOL, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, \$5.00, \$10.00, \$20.00, \$25.00, \$30.00, \$40.00, \$50.00, \$100, \$200, \$500, \$1,000, \$2,000, \$10,000, \$20,000, and \$ONEMILL SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 549 - 1.2D

PLAY SYMBOL	CAPTION
HEART SYMBOL	HEART
DIAMOND SYMBOL	DIAMND
SPADE SYMBOL	SPADE
CLUB SYMBOL	CLUB
CLUB SYMBOL	AUTO
DOLLAR SIGN SYMBOL	WIN\$25
STAR SYMBOL	WIN\$200
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$25.00	TWY FIV
\$30.00	THIRTY
\$40.00	FORTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$2,000	TWO THOU
\$10,000	10 THOU
\$20,000	20 THOU
\$ONEMILL	ONE MILL

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify

and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - There are no low-tier prizes in this game.

H. Mid-Tier Prize - A prize of \$25.00, \$30.00, \$40.00, \$50.00, \$100, \$200, and \$500.

I. High-Tier Prize - A prize of \$1,000, \$2,000, \$10,000, \$20,000 and \$1,000,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

L. Pack - A pack of "\$1,000,000 CLUB" Instant Game tickets contains 25 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 025 while the other fold will show the back of ticket 001 and front of 025.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "\$1,000,000 CLUB" Instant Game No. 549 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "\$1,000,000 CLUB" Instant Game is determined once the latex on the ticket is scratched off to expose 42 (forty-two) Play Symbols. In Game 1, the player must scratch all ten spots in the play area. The player must then count the number of club symbols and win the corresponding prize in the prize legend. If the player reveals a dollar symbol, the player will win \$25 instantly. If the player reveals a star symbol, the player will win \$200 instantly. In Game 2, if the player reveals three (3) club symbols in any one row, column or diagonal, the player will win the prize shown in the prize box. In Game 3, if the player matches any of YOUR NUMBERS to either WINNING NUMBER, the player will win the prize shown for that number. If a player reveals a club symbol, the player will win the prize shown instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 42 (forty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 42 (forty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 42 (forty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 42 (forty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No more than five like play symbols in Game 1 other than the club symbol.

C. The two auto win symbols will appear only once on a ticket and never together on the same ticket.

D. No club symbols will appear in this game if one of the auto win symbols appears.

E. No 3 or more occurrences of a play symbol other than the club symbol in this game.

F. Every game will contain a minimum of 4 club symbols.

G. No duplicate non-winning Your Numbers play symbols on a ticket.

H. No duplicate Winning Numbers on a ticket.

I. No duplicate non-winning prize symbols in this game.

J. A non-winning prize symbol will never be the same as a winning prize symbol.

K. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and \$5).

L. The \$1,000,000 top prizes can only be won in games 1 and 3.

M. The auto win symbol will only appear once in this game.

N. The auto win symbol will never appear with the \$10,000, \$20,000 or \$1,000,000 prize symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "\$1,000,000 CLUB" Instant Game prize of \$25.00, \$30.00, \$40.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100, \$200, or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$1,000,000 CLUB" Instant Game prize of \$1,000, \$2,000, \$10,000, \$20,000, \$1,000,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$1,000,000 CLUB" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a

ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "\$1,000,000 CLUB" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "\$1,000,000 CLUB" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players

whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,000,000 tickets in the Instant Game No. 549. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 549 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$25.00	480,000	6.25
\$30.00	180,000	16.67
\$40.00	150,000	20.00
\$50.00	120,000	25.00
\$100	120,000	25.00
\$200	22,500	133.33
\$500	2,500	1,200.00
\$1,000	875	3,428.57
\$2,000	600	5,000.00
\$10,000	115	26,086.96
\$20,000	50	60,000.00
\$1,000,000	3	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 2.79. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 549 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 549, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 8, 2005



Instant Game Number 555 "Armadillo Dollars"

1.0 Name and Style of Game.

A. The name of Instant Game No. 555 is "ARMADILLO DOLLARS". The play style "is match 3 of 9 with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 555 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 555.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$200, \$1,000, ARMADILLO SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 555 - 1.2D

PLAY SYMBOL	CAPTION
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$1,000	ONE THOU
ARMADILLO SYMBOL	AUTO

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify

and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 555 - 1.2E

CODE	PRIZE
ONE	\$1.00
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100, or \$200.

I. High-Tier Prize - A prize of \$1,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

L. Pack - A pack of "ARMADILLO DOLLARS" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded

in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 246 to 250 will be on the last page. A ticket will be folded over on both the front and back of the book so both ticket art and ticket backs are displayed in the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "ARMADILLO DOLLARS" Instant Game No. 555 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "ARMADILLO DOLLARS" Instant Game is determined once the latex on the ticket is scratched off to expose nine (9) Play Symbols. If the player reveals three (3) like amounts, the player will win that amount. If the player reveals two (2) like amounts and an armadillo symbol, the player will win that amount automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly nine (9) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly nine (9) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the nine (9) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
17. Each of the nine (9) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical "spot for spot" play data.

B. No three or more pairs on a ticket.

B. No four or more like play symbols on a ticket.

C. No more than one pair on a ticket that contains the auto win symbol.

D. The auto win symbol will never appear more than once on a ticket.

E. There will never be more than two like symbols on a ticket that contains the auto win symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "ARMADILLO DOLLARS" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "ARMADILLO DOLLARS" Instant Game prize of \$1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "ARMADILLO DOLLARS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "ARMADILLO DOLLARS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "ARMADILLO DOLLARS" Instant Game,

the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,120,000 tickets in the Instant Game No. 555. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 555 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1.00	1,814,400	8.33
\$2.00	846,720	17.86
\$4.00	302,400	50.00
\$5.00	120,960	125.00
\$10.00	120,960	125.00
\$20.00	60,480	250.00
\$50.00	12,600	1,200.00
\$100	3,780	4,000.00
\$200	630	24,000.00
\$1,000	189	80,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.61. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 555 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 555, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501050

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: March 8, 2005



Instant Game Number 563 "\$500,000 Cash Bonanza"

1.0 Name and Style of Game.

A. The name of Instant Game No. 563 is "\$500,000 CASH BONANZA". The play style for this game is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 563 shall be \$10.00 per ticket.

1.2 Definitions in Instant Game No. 563.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, \$1.00, \$2.00, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$500, \$1,000, \$10,000, \$500,000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 563 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
\$1.00	ONE\$
\$2.00	TWO\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY

\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$10,000	TEN THOU
\$500,000	500 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify

and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 563 - 1.2E

CODE	PRIZE
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$10.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100, or \$500.

I. High-Tier Prize - A prize of \$1,000 or \$10,000 or \$500,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (563), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 563-0000001-001.

L. Pack - A pack of "\$500,000 CASH BONANZA" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 050 will be exposed on one side of the pack and ticket front 001 on the other side.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "\$500,000 CASH BONANZA" Instant Game No. 563 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "\$500,000 CASH BONANZA" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If any of the player's YOUR NUMBERS match any of the WINNING NUMBERS, the player will win the prize shown for that number. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning Your Numbers on a ticket.

C. No duplicate Winning Numbers on a ticket.

D. No more than four like non-winning prize symbols on a ticket.

E. A non-winning prize symbol will never be the same as a winning prize symbol.

F. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and \$5).

2.3 Procedure for Claiming Prizes.

A. To claim a "\$500,000 CASH BONANZA" Instant Game prize of \$10.00, \$20.00, \$50.00, \$100, or \$500, a claimant shall sign the back of

the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100, or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$500,000 CASH BONANZA" Instant Game prize of \$1,000, \$10,000 or \$500,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$500,000 CASH BONANZA" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "\$500,000 CASH BONANZA" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "\$500,000 CASH BONANZA" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing,

distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 4,080,000 tickets in the Instant Game No. 563. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 563 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$10	1,305,600	3.13
\$20	285,600	14.29
\$50	68,000	60.00
\$100	23,800	171.43
\$500	3,502	1,165.05
\$1,000	50	81,600.00
\$10,000	20	204,000.00
\$500,000	4	1,020,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 2.42. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 563 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 563, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 8, 2005

Instant Game Number 581 "Wild 8's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 581 is "WILD 8'S". The play style is "three in a line with multiplier".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 581 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 581.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each

Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: \$1.00, \$2.00, \$3.00, \$8.00, \$16.00, \$24.00, \$100, \$800, 2 TIMES SYMBOL, 3 TIMES SYMBOL, NO BONUS SYMBOL, 1, 2, 3, 4, 5, 6, 7, 8 or 9.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 581 - 1.2D

PLAY SYMBOL	CAPTION
1	
2	
3	
4	
5	
6	
7	
8	
9	
2 TIMES SYMBOL	AMOUNT
3 TIMES SYMBOL	AMOUNT
NO BONUS	AMOUNT
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THREE\$
\$8.00	EIGHT\$
\$16.00	SIXTN
\$24.00	TWY FOR
\$100	ONE HUND
\$800	EGT HUND

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify

and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 581 - 1.2E

CODE	PRIZE
ONE	\$1.00
TWO	\$2.00
THR	\$3.00
SIX	\$6.00
EGT	\$8.00
SXN	\$16.00
TFR	\$24.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of

Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$3.00, \$6.00, \$8.00, \$16.00 or \$24.00.

H. Mid-Tier Prize - A prize of \$48.00 or \$100.

I. High-Tier Prize - A prize of \$800.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (581), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 581-0000001-001.

L. Pack - A pack of "WILD 8'S" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 246 to 250 will be on the last page. A ticket will be folded over on both the front and back of the book so both ticket art and ticket backs are displayed in the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WILD 8'S" Instant Game No. 581 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "WILD 8'S" Instant Game is determined once the latex on the ticket is scratched off to expose 11 (eleven) Play Symbols. If a player gets three 8 symbols in any one row, column or diagonal, the player wins prize indicated in the prize box. If a player reveals a 2 TIMES play symbol in the bonus box play area the player wins double the prize indicated. If a player reveals a 3 TIMES play symbol in the bonus box play area the player wins triple the prize indicated. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 11 (eleven) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 11 (eleven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 11 (eleven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. No adjacent non-winning tickets will contain identical play symbols in the same locations.

B. No ticket will contain 3 or more of a kind other than the 8 symbol.

C. The 2 TIMES and 3 TIMES bonus symbols will only appear on intended winners as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "WILD 8'S" Instant Game prize of \$1.00, \$2.00, \$3.00, \$6.00, \$8.00, \$16.00, \$24.00, \$48.00 or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$48.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WILD 8'S" Instant Game prize of \$800, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "WILD 8'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "WILD 8'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "WILD 8'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 17,040,000 tickets in the Instant Game No. 581. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 581 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	1,704,000	10.00
\$2	1,090,560	15.63
\$3	477,120	35.71
\$6	136,320	125.00
\$8	34,080	500.00
\$16	34,080	500.00
\$24	68,160	250.00
\$48	27,122	628.27
\$100	1,633	10,434.78
\$800	213	80,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.77. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 581 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 581, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200500986
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 4, 2005



Instant Game Number 587 "Find the 5's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 587 is "FIND THE 5'S". The play style is "key number match with prize legend".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 587 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 587.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, and 9.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 587 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify

and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 587 - 1.2E

CODE	PRIZE
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
TEN	\$10.00
FTN	\$15.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00, \$15.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00 or \$200.

I. High-Tier Prize- A prize of \$2,000 or \$25,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (587), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 587-0000001-001.

L. Pack - A pack of "FIND THE 5'S" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 001 and 002 will be on the top page; ticket 003 and 004 will be on the next page; etc.; and tickets 249 and 250 will be on the last page. Please note the books will be in an A- B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "FIND THE 5'S" Instant Game No. 587 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "FIND THE 5'S" Instant Game is determined once the latex on the ticket is scratched off to expose 25 (twenty-five) Play Symbols. The player must count the number of "5" play symbols. If a player reveals a minimum of three (3) "5" play symbols, or a maximum of twelve (12) "5" play symbols, the player will win the corresponding prize in the prize legend. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 25 (twenty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 25 (twenty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 25 (twenty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
17. Each of the 25 (twenty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No five or more like non-winning play symbols on a ticket.

C. No three or more like adjacent non-winning play symbols in a row, column or diagonal.

E. Every ticket will contain at least one 5 play symbol.

F. No ticket will contain 13 or more 5 play symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "FIND THE 5'S" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "FIND THE 5'S" Instant Game prize of \$2,000 or \$25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "FIND THE 5'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "FIND THE 5'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "FIND THE 5'S" Instant Game, the Texas

Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 587. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 587 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2.00	964,800	8.33
\$4.00	514,560	15.63
\$5.00	160,800	50.00
\$10.00	96,480	83.33
\$15.00	64,320	125.00
\$20.00	32,160	250.00
\$50.00	16,080	500.00
\$200	804	1,000.00
\$2,000	134	60,000.00
\$25,000	16	502,500.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.33. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 587 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 587, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501052
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 8, 2005



Instant Game Number 588 "Gold Mine"

1.0 Name and Style of Game.

A. The name of Instant Game No. 588 is "GOLD MINE". The play style is "key number match with prize legend".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 588 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 588.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: \$0.00, \$5.00, \$10.00, \$15.00, \$25.00, \$50.00, \$100, \$500, \$1,000, \$50,000, and GOLD NUGGET SYMBOL.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 588 - 1.2D

PLAY SYMBOL	CAPTION
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTEEN
\$25.00	TWY FIV
\$50.00	FIFTY
\$100	ONE HUN
\$500	FIV HUN
\$1,000	ONE THOU
\$50,000	50 THOU
\$0.00	ZERO\$
GOLD NUGGET SYMBOL	NUGGET

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify

and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 588 - 1.2E

CODE	PRIZE
FIV	\$5.00
TEN	\$10.00
FTN	\$15.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$5.00, \$10.00, or \$15.00.

H. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$100, or \$500.

I. High-Tier Prize- A prize of \$1,000 or \$50,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (588), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 75 within each pack. The format will be: 588-0000001-001.

L. Pack - A pack of "GOLD MINE" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 075 will be revealed on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 075 will be shown on the back of the pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "GOLD MINE" Instant Game No. 588 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "GOLD MINE" Instant Game is determined once the latex on the ticket is scratched off to expose 31 (thirty-one) Play Symbols. The player must scratch games 1 through 5. There are two ways to win within each game. If the player matches three (3) prize amounts the player will win that amount or if the player reveals Gold Nugget symbol(s), the player will win the corresponding prize shown in the prize legend. In the bonus area, if the player reveals any

prize amount, the player will win that amount. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 31 (thirty-one) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 31 (thirty-one) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 31 (thirty-one) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
17. Each of the 31 (thirty-one) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. Consecutive non-winning tickets within a book will not have identical patterns.
- B. Tickets can win up to six (6) times.
- C. Each game can only win once.
- D. No Game will contain two (2) sets of three (3) matching prize amounts.
- E. No prize amount will appear more than three (3) times within a Game.
- F. The "Gold Nugget" symbol will never appear on non-winning tickets.
- G. No non-winning game will contain three (3) or more identical prize symbols.
- H. BONUS AREA: Players can win once in this play area.
- I. BONUS AREA: Winning tickets in this play area will reveal a prize amount.
- J. BONUS AREA: Winning tickets in this play area will win only the \$5, \$10, \$15, \$25, \$50, \$100 and \$500 prize levels.
- K. BONUS AREA: Tickets that do not win in the Bonus Area will display the non-winning message of: \$0 .00

2.3 Procedure for Claiming Prizes.

A. To claim a "GOLD MINE" Instant Game prize of \$5.00, \$10.00, \$15.00, \$25.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "GOLD MINE" Instant Game prize of \$1,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS)

and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "GOLD MINE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "GOLD MINE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "GOLD MINE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,960,000 tickets in the Instant Game No. 588. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 588 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5.00	554,400	7.14
\$10.00	475,200	8.33
\$15.00	79,200	50.00
\$25.00	39,600	100.00
\$50.00	48,015	82.47
\$100	9,900	400.00
\$500	396	10,000.00
\$1,000	20	198,000.00
\$50,000	3	1,320,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.28. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 588 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 588, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501053
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 8, 2005

North Central Texas Council of Governments

Request for Proposals to Assist the North Texas Clean Air Coalition in Developing and Implementing an Air Quality Public Awareness Campaign for the Dallas-Fort Worth Non-Attainment Area

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals to assist the North Texas Clean Air Coalition in developing and implementing an air quality public awareness campaign for the Dallas-Fort Worth (DFW) non-attainment area. The public awareness campaign will encourage public participation and support for the transportation elements of the State Implementation Plan (SIP) developed by the Texas Commission on Environmental Quality

(TCEQ) and NCTCOG. The SIP includes numerous strategies that will enable the DFW area to meet federal air quality standards. The focus of this effort is to support ozone season public awareness initiatives including educating the public and local businesses concerning the importance of clean air; ways transportation choices impact air quality; and what the general public and local businesses can do to reduce emissions and improve air quality. The campaign will include paid advertising, public service announcements, media relations, special events, business community outreach, and other components agreed on by the Project Steering Committee.

Due Date

Proposals must be submitted no later than 5 p.m. Central Daylight Time on Friday, April 15, 2005, to Mike Sims, Senior Program Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the Request for Proposals, contact Therese Bergeon, (817) 695-9267.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee. The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be

discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200501082

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: March 9, 2005

Texas Parks and Wildlife Department

Notice of Opportunity to Comment

Proposed Modifications to the Statewide Vegetation Management Plan

Pursuant to the requirements of 31 TAC §57.132, the Texas Parks and Wildlife Department (TPWD) is soliciting public comment from interested parties concerning potential modifications to the TPWD guidance document for the Statewide Vegetation Management Plan (Plan). The Plan is the statewide mechanism providing for the coordination, oversight, guidance and, where applicable, public notice and enforcement of all activities related to the management of nuisance aquatic vegetation on public bodies of surface water, including, but not limited to, coordination, oversight, public notification and enforcement of all aquatic herbicide use to protect state fish and wildlife resources and habitat and to prevent unreasonable risk from the use of any aquatic herbicide.

The potential modifications to the Plan are as follows:

(1) In Parts C and D, alterations to reflect changes in herbicide technology, including the addition of information about imazapyr and tri-clopyr-based herbicides.

(2) Throughout the document, references to the Texas Natural Resource Conservation Commission (TNRCC) are changed to refer to the new name of that agency, the Texas Commission on Environmental Quality (TCEQ).

(3) In Part E, minor procedural changes in how to develop and submit a treatment proposal for aquatic vegetation management activities.

(4) In Appendix F, changes in the protocol for the use of triploid grass carp in public water.

The entire guidance document may be viewed online at <http://www.tpwd.state.tx.us/fish/infish/vegetation/newguide>.

To comment on the potential modifications or to obtain further information on the guidance document, contact Dr. Earl Chilton, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4652.

Comments will be accepted for 60 days following the publication of this notice.

TRD-200501072

Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

Filed: March 9, 2005

Public Utility Commission of Texas

Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 2, 2005, for retail electric

provider (REP) certification, pursuant to Public Utility Regulatory Act (PURA) §§39.101 - 39.109. A summary of the application follows.

Docket Title and Number: Application of National Power Company, Incorporated for Retail Electric Provider (REP) certification, Docket Number 30813 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 25, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30813.

TRD-200500984

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: March 4, 2005

Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of a joint application for sale, transfer, or merger filed with the Public Utility Commission of Texas on March 3, 2005, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.101 and §37.154 (Vernon 1998 & Supplement 2005) (PURA).

Docket Style and Number: Joint Application of AEP Texas North Company and LCRA Transmission Services Corporation to Transfer Certificate Rights and for Approval of Transfer of Facilities, Docket Number 30828.

The Application: AEP Texas North Company (TNC) and LCRA Transmission Services Corporation (LCRA TSC) (Applicants) request approval to transfer from TNC to LCRA TSC one transmission facility and associated certificate of convenience and necessity (CCN) rights. TNC holds CCN Number 30170 and LCRA TSC holds CCN Number 30110. TNC owns the existing 69-kV transmission lines located in Coleman County, which is being rebuilt as a double circuit 138-kV and 69-kV transmission line to increase power transfer capacity in the area. The transmission line is governed by the Santa Anna to Bangs Project Agreement. The approximate 7.2 mile line is located in Coleman County and is a rebuild of the existing 69-kV line from the Santa Anna Substation to the Bangs interconnect point with TXU Electric Delivery. This transmission line will increase power transfer capacity in the area. For these transmission facilities, the existing single pole wood 69 kV transmission line is being removed and replaced with a single pole steel 69/138k-V double circuit transmission line of which the 69-kV circuit will be retained by TNC and the new 138-kV circuit is proposed to be transferred to LCRA TSC. The rebuilding of the line does not require a CCN number under P.U.C. Substantive Rule §25.101(c)(5)(A) and (B). The line is projected to be completed in June 2005.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 30828.

TRD-200500988
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 4, 2005

◆ ◆ ◆
Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of a joint application for sale, transfer, or merger filed with the Public Utility Commission of Texas on March 4, 2005, pursuant to the Public Utility Regulatory Act, TEXAS UTILITY CODE ANNOTATED §§14.101 and 37.154 (Vernon 1998 & Supplement 2005) (PURA).

Docket Style and Number: Joint Application of Pedernales Electric Cooperative, Inc. and LCRA Transmission Services Corporation to Transfer Certificate Rights and for Approval of Transfer of Facilities, Docket Number 30833.

The Application: Pedernales Electric Cooperative, Inc. (PEC) and LCRA Transmission Services Corporation (LCRA TSC) (Applicants) request approval to transfer from PEC to LCRA TSC certificate of convenience and necessity (CCN) rights associated with the Friendship to Manchaca transmission line route approved by the Public Utility Commission of Texas in Docket Number 18389. PEC holds CCN Number 30128 and LCRA TSC holds CCN Number 30110. On November 24, 1997, PEC filed a CCN application for a single-circuit 138-kV transmission line that would connect the Friendship and Manchaca Substations, and include the construction of a new substation. All facilities are to be located in northern Hays and southern Travis Counties. On January 22, 1999, the commission approved construction of the approximately 7.8 mile long transmission line. PEC and LCRA TSC request that PEC's existing CCN rights concerning the future transmission line be transferred to LCRA TSC under §37.154 of PURA.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 30833.

TRD-200501043
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 7, 2005

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Notice of Petition for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on March 1, 2005, for waiver of denial by the North American Numbering Plan Administrator (NANPA) Pooling Administrator (PA) of Sprint Communications Company, L.P.'s request for one thousands-block of numbers in the Spring rate center.

Docket Title and Number: Petition of Sprint Communications Company, L.P. for Waiver of Neustar Denial of Number Block Request in Spring Rate Center. Docket Number 30810.

The Application: Sprint Communications Company, L.P. submitted an application to the Pooling Administrator (PA) for numbering resources

in the Spring rate center. The PA denied the request based on the grounds that Sprint Communications Company, L.P. did not meet the utilization threshold necessary in order to obtain growth number resources.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 25, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30810.

TRD-200500985
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 4, 2005

◆ ◆ ◆
Revised Notice of Application for Review of Agreements Relating to Transfer of Nuclear Decommissioning Trust Funds

Notice is given to the public of an application for transfer of responsibility for administration of nuclear decommissioning trust funds with the Public Utility Commission of Texas on February 10, 2005, pursuant to the Public Utility Regulatory Act, TEXAS UTILITY CODE ANNOTATED §§14.001, 14.002, 39.205 (Vernon 1998 & Supplement 2005) (PURA) and P.U.C. Substantive Rule §25.303.

Docket Style and Number: Commission Review of Agreements Relating to the Transfer of Nuclear Decommissioning Trust Funds from AEP Texas Central Company to Texas Genco, LP Pursuant to P.U.C. Substantive Rule §25.303(d). Project Number 30749.

The Application: AEP Texas Central Company (TCC) and Texas Genco filed a joint application for review of agreements relating to the transfer of a proportionate share of TCC's nuclear decommissioning funds, rights, and responsibilities to Texas Genco in conjunction with the sale of a portion of TCC's undivided interest in the South Texas Nuclear Project (STP).

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Project Number 30749.

TRD-200501041
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 7, 2005

◆ ◆ ◆
Revised Notice of Application for Review of Agreements Relating to Transfer of Nuclear Decommissioning Trust Funds

Notice is given to the public of an application for transfer of responsibility for administration of nuclear decommissioning trust funds with the Public Utility Commission of Texas on February 14, 2005, pursuant to the Public Utility Regulatory Act, TEXAS UTILITY CODE ANNOTATED §§14.001, 14.002, 39.205 (Vernon 1998 & Supplement 2005) (PURA) and P.U.C. Substantive Rule §25.303.

Docket Style and Number: Commission Review of Agreements Relating to the Transfer of Nuclear Decommissioning Trust Funds from AEP Texas Central Company to City Public Service Board Pursuant to P.U.C. Substantive Rule §25.303(d). Project Number 30760.

The Application: AEP Texas Central Company (TCC) and the City of San Antonio, Texas, acting by and through the City Public Service Board filed a joint application for review of agreements relating to the transfer of a proportionate share of TCC's nuclear decommissioning funds, rights, and responsibilities to CPS in conjunction with the sale of a portion of TCC's undivided interest in the South Texas Nuclear Project (STP).

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Project Number 30760.

TRD-200501042

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: March 7, 2005

Texas A&M University, Board of Regents

Consultant Contract Award

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, The Texas A&M University System furnishes this notice of consultant contract award. The consultant will provide charitable trust consulting and administration services for The Texas A&M University System. A notice for request for proposals was filed in the September 3, 2004 issue of the *Texas Register* (29 TexReg 8688).

The contract was awarded to TIAA-CREF Trust Company, FSB., One Metropolitan Square, 211 North Broadway, Suite 1000, St Louis, Missouri 63102-2733. The annual dollar value of the contract is calculated as 0.60% of all assets with a minimum annual fee of \$5,000 for the first year of the contact, \$10,000 for the second year, and \$20,000 for each subsequent year. The beginning date of the contract is January 19, 2005.

Selection criteria included competence, experience, knowledge, qualifications, and reasonableness of price. Proposals were received before 5:00 pm on September 10, 2004.

The necessity of these consulting services has been affirmed by The Texas A&M University System since the required skills and resources needed for these consulting and administration services are not available within The Texas A&M University System or any other known agency of the State of Texas.

TRD-200500989

Vickie Burt Spillers

Executive Secretary to the Board

Texas A&M University, Board of Regents

Filed: March 4, 2005

University of Houston

Request for Proposal

In compliance with Chapter 2254, Texas Government Code, the University of Houston furnishes this notice of request for proposal. The University of Houston seeks proposals from a firm to provide consulting services to assist its Center for Materials Chemistry in developing a Center for Excellence in Energy Transmission and Distribution Materials. In doing so, the University is in need of understanding of a proper structure and operation of the energy transmission and distribution system in the United States and governing regulatory issues related thereto. The University invites firms with demonstrated expertise, experience, and success in these areas to submit comprehensive responses to this request for proposal. Interested parties are invited to express their interest and describe their capabilities on or before April 18, 2005.

The term of the contract is to be for a one (1) year period beginning on or about April 25, 2005 and ending April 24, 2006, subject to two (2) renewal options, each of six (6) months' duration. Further information can be obtained from Allan J. Jacobson 713.743.2785. All proposals must be specific and must be responsive to the criteria set forth in this request.

SCOPE OF WORK: Consulting services to assist the University and its advisory groups in providing information and in attending required meetings and prepare required reports in the following areas: (i) Background on public policy changes in areas of electricity restructuring and regulation, (ii) Background on grid standards and logistics support and on environmental issues related to electricity transmission and distribution, (iii) Local, state and U.S. government agencies, and organizations related to the development, management and regulation of energy production, transmission and storage, and (iv) Energy and utility companies concerned with energy development, supply, and storage. The scope of work shall not encompass any activities that would require legal advice or lobbying of agencies, organizations or in any way representing the University in lobbying for redress or in expressing opinions thereto.

GENERAL INSTRUCTIONS: Submit one (1) original, three (3) paper copies of your proposal and a CD version in a sealed envelope to: Allan J. Jacobson, University of Houston, 136 Fleming Building, Houston, Texas 77204-5003 before 5:00 P.M. April 18, 2005. The original shall be prepared on a word processor and formatted in at least 11-point-font that is clearly readable. The paper copies shall be of good, readable quality.

COMPLIANCE WITH RFP REQUIREMENTS: By submission of a proposal, a submitter agrees to be bound by the requirements set forth in this RFP. The University, at its sole discretion, may disqualify a proposal from consideration if the University determines a proposal is non-responsive and/or non-compliant, in whole or in part, with the requirements set forth in this RFP.

SIGNATURE, CERTIFICATION OF SUBMITTER: The original paper proposal must be signed and dated by a representative of the submitter who is authorized to bind the submitter to the terms and conditions contained in this RFP and to comply with the information submitted in the proposal. Each submitter certifies to both (1) the completeness, veracity, and accuracy of the information provided in the proposal and (2) the authority of the individual whose signature appears on the proposal to bind the submitter to the terms and conditions set forth in this RFP and a resulting agreement should the submitter be selected. Proposals submitted without the required signature shall be disqualified.

OWNERSHIP OF PROPOSALS: All proposals become the physical property of the University upon receipt.

USE, DISCLOSURE OF INFORMATION: Submitters acknowledge that the University is an agency of the State of Texas and is, therefore, required to comply with the Texas Public Information Act. If a proposal includes proprietary data, trade secrets, or information the

submitter wishes to except from public disclosure, then the submitter must specifically label such data, secrets, or information as follows: "PRIVILEGED AND CONFIDENTIAL -- PROPRIETARY INFORMATION." To the extent permitted by law, information labeled by the submitter as proprietary will be used by the University only for purposes related to or arising out of the (1) evaluation of proposals, (2) selection of a submitter pursuant to the RFP process, and (3) negotiation and execution of a Contract, if any, with the submitter selected.

RESCISSION OF PROPOSAL: A proposal can be withdrawn from consideration at any time prior to expiration of the deadline for proposals pursuant to a written request sent to the University.

REQUEST FOR CLARIFICATION: The University reserves the right to request clarification of any information contained in a proposal.

ADDENDA TO THE RFP: Each submitter will be provided with copies of University-approved addenda, including amendments, if any, to the RFP. If and as necessary, as determined by the University, submitters will, in turn, be allowed time to revise or supply additional information in response to such addenda.

PRE-PROPOSAL CONFERENCE: There will not be a pre-proposal conference.

COMMUNICATIONS WITH UNIVERSITY PERSONNEL: Except as provided in this RFP and as is otherwise necessary for the conduct of ongoing University business operations, submitters are expressly and absolutely prohibited from engaging in communications with University personnel who are involved in any manner in the review and/or evaluation of the proposals; selection of a submitter; and/or negotiations or formalization of a contract. If any submitter engages in conduct or communications that the University determines are contrary to the prohibitions set forth in this section, the University may, at its sole discretion, disqualify the submitter and withdraw the submitter's proposal from consideration.

EVALUATION OF PROPOSALS: The proposals will be reviewed in accordance with the criteria set forth in this RFP. Proposals that are (1) incomplete, (2) not properly certified and signed, (3) not in the required format, or (4) otherwise non-compliant, in whole or in part, with any of the requirements set forth in this RFP may be disqualified by the University.

DISCUSSIONS WITH SUBMITTERS: The University may conduct discussions and/or negotiations with any submitter that appears to be eligible for award ("Eligible Submitter") pursuant to the selection criteria set forth in this RFP. In conducting discussions and/or negotiations, the University will not disclose information derived from proposals submitted by competing submitters, except as and if law requires disclosure.

MODIFICATION OF PROPOSALS: All Eligible Submitters will be afforded the opportunity to submit best and final proposals if (a) negotiations with any other submitter result in a material alteration to the RFP and (b) such material alteration has a cost consequence that could alter the submitter's quotations regarding rates for Services.

SELECTION OF PROPOSER: The submitter selected for award will be the submitter whose proposal, as presented in response to this RFP and as determined by the University in accordance with the evaluation criteria set forth in this RFP, to be the most advantageous and result in best value to the University. Submitters acknowledge that the University is not bound to accept the lowest-priced proposal.

EVALUATION OF PROPOSALS: Submission of a proposal indicates the submitter's acceptance of the evaluation process set forth in this RFP and the submitter's acknowledgement that subjective judgments must be made by the University in regard to the evaluation process.

CRITERIA FOR EVALUATION: Evaluation of proposals and award to the Selected Submitter will be based on the following factors, as weighted and listed as follows: (1) Five (5) or more years of consulting experience, (2) Completeness of responses to the above parameters (Scope of Work, Deliverables, Objectives), (3) Three or more directly related references. References shall include a point of contact and means thereof, (4) Estimate of fees and rates, and (5) The University may also consider other information it deems relevant to the selection of a consultant.

CONSIDERATION OF ADDITIONAL INFORMATION: The University reserves the right to ask for and consider any additional information deemed beneficial to the University in evaluation of the proposals.

TERMINATION: This Request for Proposal in no manner obligates the University of Houston University to the eventual purchase of any services described, implied or which may be proposed until confirmed by a written consultant contract. Progress towards this end is solely at the discretion of the University of Houston and may be terminated without penalty or obligation at any time prior to the signing of a contract. The University of Houston reserves the right to cancel this RFP at any time, for any reason and to reject any or all proposals.

TRD-200501045

Brian S. Nelson

Executive Director and Associate General Counsel

University of Houston

Filed: March 7, 2005

University of North Texas

Invitation for Consultants to Provide Offers of Consulting Services Related to Government Relations

Pursuant to the provisions of Texas Government Code, Chapter 2254, the University of North Texas (UNT) System extends this invitation (Invitation) to qualified and experienced consultants interested in providing the consulting services described in this Invitation to the University of North Texas System and its member institutions.

Scope of Work:

The selected federal government relations consulting firm will be responsible for assisting the UNT System and member institutions in developing and executing a government relations strategy to attract support for research facilities, equipment, technology, and programs through federal initiatives pertaining, but not limited to, the United States Congress, federal agencies, and related entities; and assisting the UNT System and member institutions in evaluating research resources, developing concepts and themes for agreed upon research initiatives, formulating strategies and timetables for presentation of research and related initiatives, assisting in preparation of supporting documentation, coordinating meetings with elected representatives and legislative staff, serving as a liaison to all federal entities, preparing testimony for presentation, developing legislative strategies, and monitoring and reporting on government programs relevant to research initiatives and other areas of interest to the UNT System and member institutions.

Specifications:

Any consultant submitting an offer in response to this Invitation must provide the following: (1) the consultant's legal name, including type of entity (individual, partnership, corporation, etc.) and address; (2) background information regarding the consultant, including the number of years in business and the number of employees; (3) information regarding the qualifications, education, and experience of the team members proposed to conduct the requested services; (4) the hourly rate

to be charged for each team member providing services; (5) the earliest date by which the consultant could begin providing the services; (6) a list of five client references, including any complex institutions or systems of higher education for which the consultant has provided similar consulting services; (7) a statement of the consultant's approach to providing the services described in the Scope of Work section of this Invitation, any unique benefits the consultant offers the UNT System, and any other information the consultant desires the UNT System to consider in connection with the consultant's offer; (8) information to assist the UNT System in assessing the consultant's demonstrated competence and experience providing consulting services similar to the services requested in this Invitation; (9) information to assist the UNT System in assessing the consultant's experience performing the requested services for other complex institutions or systems of higher education; (10) information to assist the UNT System in assessing whether the consultant will have any conflicts of interest in performing the requested services; (11) information to assist the UNT System in assessing the overall cost to the UNT System for the requested services to be performed; and (12) information to assist the UNT System in assessing the consultant's capability and financial resources to perform the requested services.

Selection Process:

The consulting services sought herein relate to services previously provided to the UNT System by American Continental Group. Unless a better offer (as determined by the UNT System) is received in response to this Invitation, the UNT System intends to award the contract for the consulting services to American Continental Group. Selection of the Successful Offer (defined below) submitted in response to this Invitation by the Submittal Deadline (defined below) will be made using the competitive process described below. After the opening of the offers and upon completion of the initial review and evaluation of the offers submitted, selected consultants may be invited to participate in oral presentations. The selection of the Successful Offer may be made by the UNT System on the basis of the offers initially submitted, without discussion, clarification or modification. In the alternative, selection of the Successful Offer may be made by the UNT System on the basis of negotiation with any of the consultants. At the UNT System's sole option and discretion, it may discuss and negotiate all elements of the offers submitted by selected consultants within a specified competitive range. For purposes of negotiation, a competitive range of acceptable or potentially acceptable offers may be established comprising the highest rated offers. The UNT System will provide each consultant within the competitive range with an equal opportunity for discussion and revision of its offer. The UNT System will not disclose any information derived from the offers submitted by competing consultants in conducting such discussions. Further action on offers not included within the competitive range will be deferred pending the selection of the Successful Offer, however, the UNT System reserves the right to include additional offers in the competitive range if deemed to be in its best interest. After the submission of offers but before final selection of the Successful Offer is made, the UNT System may permit a consultant to revise its offer in order to obtain the consultant's best final offer. The UNT System is not bound to accept the lowest priced offer if that offer is not in its best interest, as determined by the UNT System. The UNT System reserves the right to: (a) enter into agreements or other contractual arrangements for all or any portion of the Scope of Work set forth in this Invitation with one or more consultants; (b) reject any and all offers and re-solicit offers; or (c) reject any and all offers and temporarily or permanently abandon this procurement, if deemed to be in the best interest of the UNT System.

Criteria for Selection:

The successful offer (Successful Offer) must be submitted in response to this Invitation by the Submittal Deadline will be the offer that is the most advantageous to the UNT System in the UNT System's sole discretion. Offers will be evaluated by University of North Texas System and member institution personnel. The evaluation of offers and the selection of the Successful Offer will be based on the information provided to the UNT System by the consultant in response to the Specifications section of this Invitation. Consideration may also be given to any additional information and comments if such information or comments increase the benefits to the UNT System. The successful consultant will be required to enter into a contract acceptable to the UNT System.

Consultant's Acceptance of Offer:

Submission of an offer by a consultant indicates: (1) the consultant's acceptance of the Offer Selection Process, the Criteria for Selection, and all other requirements and specifications set forth in this Invitation; and (2) the consultant's recognition that some subjective judgments must be made by the UNT System during this Invitation process.

Finding by Chancellor:

The Chancellor of the University of North Texas System finds that the consulting services are necessary because the University of North Texas System does not have the specialized experience or the staff resources available in Washington, D.C. to support existing and proposed programs of the University of North Texas System and its member institutions. The University of North Texas System believes that such expert consulting services will be cost effective by expanding federal investment in research, teaching, and related programs in Texas throughout the University of North Texas System.

Submittal Deadline:

To respond to this Invitation, consultants must submit the information requested in the Specification section of this Invitation and any other relevant information in a clear and concise written format to: Don Lynch, Purchasing Services Manager, University of North Texas System, 2310 North Interstate 35-E, P.O. Box 310499, Denton, Texas 76201. Offers must be submitted in an envelope or other appropriate container and the name and return address of the consultant must be clearly visible. All offers must be received at the above address no later than 5:00 p.m., CST, Monday, April 18, 2005 (Submittal Deadline). Submissions received after the Submittal Deadline will not be considered.

Questions:

Questions concerning this Invitation should be directed to: Don Lynch, Purchasing Services Manager, University of North Texas System, 2310 North Interstate 35-E, P.O. Box 310499, Denton, Texas 76201. The UNT System may in its sole discretion respond in writing to questions concerning this Invitation. Only the UNT System's responses made by formal written addenda to this Invitation shall be binding. Oral or other written interpretations or clarifications shall be without legal effect.

TRD-200501062

Sandy Shelton

Contract Administration Manager

University of North Texas

Filed: March 8, 2005

Texas Workers' Compensation Commission

Invitation to Apply to the Medical Advisory Committee (MAC)

The Texas Workers' Compensation Commission seeks to have a diverse representation on the MAC and invites qualified individuals from all regions of Texas to apply for openings on the MAC in accordance with the eligibility requirements of the *Procedures and Standards for the Medical Advisory Committee*. The Medical Review Division is currently accepting applications for the following Medical Advisory Committee representative vacancies:

Primary

* Public Health Care Facility

Alternate

* Public Health Care Facility

* Dentist

* Podiatrist

* Employer

* Employee

* General Public Representative 1

* General Public Representative 2

Commissioners for the Texas Workers' Compensation Commission appoint the Medical Advisory Committee members who are composed of 18 primary and 18 alternate members representing health care providers, employees, employers, insurance carriers, and the general public. Primary members are required to attend all Medical Advisory Committee meetings, subcommittee meetings, and work group meetings to which they are appointed. The alternate member may attend all meetings, however during a primary member's absence, the alternate member must attend meetings to which the primary member is appointed. Requirements and responsibilities of members are established in the *Procedures and Standards for the Medical Advisory Committee* as adopted by the Commission.

The Medical Advisory Committee meetings must be held at least quarterly each fiscal year during regular Commission working hours. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings. Voluntary service on the Medical Advisory Committee is greatly appreciated by the TWCC Commissioners and the TWCC Staff.

The purpose and task of the Medical Advisory Committee, which includes advising the Commission's Medical Review Division on the development and administration of medical policies, rules and guidelines, are outlined in the Texas Workers' Compensation Act, §413.005.

Applications and other relevant Medical Advisory Committee information may be viewed and downloaded from the Commission's website at <http://www.twcc.state.tx.us>. Click on 'Commission Meetings', then 'Medical Advisory Committee'. Applications may also be obtained by calling Jane McChesney, MAC Coordinator, at 512-804-4855 or Ruth Richardson, Manager of Monitoring, Analysis and Education, Medical Review Division at 512-804-4850.

The qualifications as well as the terms of appointment for all positions are listed in the *Procedures and Standards for the Medical Advisory Committee*. These *Procedures and Standards* are as follows:

LEGAL AUTHORITY The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division is established under the Texas Workers' Compensation Act, (the Act) §413.005.

PURPOSE AND ROLE The purpose of the Medical Advisory Committee (MAC) is to bring together representatives of health care specialties and representatives of labor, business, insurance and the general public

to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

COMPOSITION Membership. The composition of the committee is governed by the Act, as it may be amended. Members of the committee are appointed by the Commissioners and must be knowledgeable and qualified regarding work-related injuries and diseases.

Members of the committee shall represent specific health care provider groups and other groups or interests as required by the Act, as it may be amended. As of September 1, 2001, these members include a public health care facility, a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, and an acupuncturist. Appointees must have at least six (6) years of professional experience in the medical profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint the other members of the committee as required by the Act, as it may be amended. An insurance carrier representative may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers compensation patients. This fact must be certified in their application to the MAC.

The representative of employers, representative of employees, and representatives of the general public shall not hold a license in the health care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the MAC, each of whom shall meet the qualifications of an appointed member.

Terms of Appointment: Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term.

Abandonment will be deemed to occur if any primary member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. Abandonment will be deemed to occur if any alternate member is absent from more than two (2) consecutive meetings which the alternate is required to attend because of the primary member's absence without an excuse accepted by the Medical Review Division Director.

The Commission will stagger the August 31st end dates of the terms of appointment between odd and even numbered years to provide sufficient continuity on the MAC.

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria, which are not required by statute.

RESPONSIBILITY OF MAC MEMBERS Primary Members. Make recommendations on medical issues as required by the Medical Review Division.

Attend the MAC meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

Alternate Members. Attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of MAC proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a MAC meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a MAC meeting.

Committee Officers. The TWCC Commissioners designate the chairman of the MAC. The MAC will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

Responsibilities of the Chairman: Preside at MAC meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division; prior to meetings, confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate:

- a. Preparation of a suitable agenda.
- b. Planning MAC activities.
- c. Establishing meeting dates and calling meetings.
- d. Establishing subcommittees.
- e. Recommending MAC members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on MAC meetings.

COMMITTEE SUPPORT STAFF The Director of Medical Review will provide coordination and reasonable support for all MAC activities. In addition, the Director will serve as a liaison between the MAC and the Medical Review Division staff of TWCC, and other Commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the MAC and its subcommittees and work groups:

Preparing agenda and support materials for each meeting.

Preparing and distributing information and materials for MAC use.

Maintaining MAC records.

Preparing minutes of meetings.

Arranging meetings and meeting sites.

Maintaining tracking reports of actions taken and issues addressed by the MAC.

Maintaining attendance records.

SUBCOMMITTEES The chairman shall appoint the members of a subcommittee from the membership of the MAC. If other expertise is needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

WORK GROUPS When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the MAC.

WORK PRODUCT No member of the MAC, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the MAC, a subcommittee, or a work group.

MEETINGS Frequency of Meetings. Regular meetings of the MAC shall be held at least quarterly each fiscal year during regular Commission working hours.

CONDUCT AS A MAC MEMBER Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe the following conduct code and will be required to sign a statement attesting to that intent.

Comportment Requirements for MAC Members:

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among MAC members;

Accurately represent their affiliations and notify the MAC chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the MAC: a. in advertising to promote themselves or their business. b. to gain financial advantage either for themselves or for those they represent; however, members may list MAC membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attn: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the MAC Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

TRD-200501046

Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: March 8, 2005



How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the TAC.

The TAC volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the TAC, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the TAC scheme, each section is designated by a TAC number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the *Texas Administrative Code*; TAC stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 16, April 9, July 9, and October 8, 2004). If a rule has changed during the time period covered by the table, the rule's TAC number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

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